

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. 2:01-CV-125-P-H.

**AGREEMENT OF SETTLEMENT WITH DEFENDANTS CAPITOL  
RECORDS, INC. D/B/A EMI MUSIC DISTRIBUTION, VIRGIN RECORDS  
AMERICA, INC., PRIORITY RECORDS LLC, TIME WARNER, INC.,  
WARNER-ELEKTRA-ATLANTIC CORP., WEA, INC., WARNER MUSIC  
GROUP, INC., WARNER BROS. RECORDS, INC., ATLANTIC RECORDING  
CORPORATION, ELEKTRA ENTERTAINMENT GROUP, INC., RHINO  
ENTERTAINMENT COMPANY, UNIVERSAL MUSIC & VIDEO  
DISTRIBUTION CORPORATION, UNIVERSAL MUSIC GROUP, INC.,  
UMG RECORDINGS, INC., BERTELSMANN MUSIC GROUP, INC., BMG  
MUSIC, AND SONY MUSIC ENTERTAINMENT INC. AND RELEASE**

This Settlement Agreement, dated as of September 26, 2002, is made and entered by and among the following parties (as defined further in 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) defendants Capitol Records, Inc. d/b/a EMI Music Distribution, Virgin Records America, Inc., and Priority Records LLC (collectively, "EMD"); 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 (collectively "WEA"); Universal Music & Video Distribution Corporation, Universal Music Group, Inc., and UMG Recordings, Inc. (collectively "Universal"); Bertelsmann Music Group, Inc. and BMG Music (collectively "BMG"); and Sony

Music Entertainment Inc. ("Sony") (collectively referred to hereafter as "Distributor Defendants"), by and through their 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. However, counsel for the Plaintiffs recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Litigation against Distributor Defendants through trial and appeals and also have taken into account the uncertainty inherent in litigation, especially in complex cases like the Litigation. After conducting an extensive investigation into the facts and issues raised by the Litigation, including substantial party and third-party discovery, 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.**

**DISTRIBUTOR DEFENDANTS' DENIALS  
OF WRONGDOING AND LIABILITY**

Distributor Defendants have denied and continue 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 and believe that the evidence developed to date supports these denials, as well as Distributor Defendants' defenses against

Plaintiffs' claims. Nonetheless, Distributor Defendants have concluded that further conduct of the Litigation would be protracted and expensive. Distributor Defendants also have taken into account the uncertainty and risks inherent in any litigation, especially in complex cases like the Litigation, and have therefore determined that it is desirable and beneficial to them 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 Distributor Defendants, 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. "BMG" means Bertelsmann Music Group, Inc. and BMG Music.
- 1.2. "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) and the Non-Cash Consideration designated in the Distribution Plan for *cy pres* distribution. The Cy Pres Distribution Plan will be submitted to the Court with the motion for final approval of the settlement of this Litigation with respect to Distributor Defendants described in paragraph 5.2 and is not part of the Settlement Agreement. Plaintiffs shall provide Distributor

Defendants with a substantially final 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.

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

1.4. "Distribution Plan" means the plan or method of allocation of the Settlement Fund (after payment of attorneys' fees, costs and expenses) and the Non-Cash Consideration. The Distribution Plan will be submitted to the Court with the Preliminary Approval Motion described in paragraph 5.1 and is not part of this Settlement Agreement. Plaintiffs will provide a substantially final copy of the Distribution Plan to Distributor Defendants simultaneously with the execution of this Settlement Agreement.

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

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

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

1.8. "Escrow Agent" means Fifth Third Bank of Columbus, Ohio, whose duties are described in paragraph 3 below and in the Escrow Agreement dated September 26, 2002 (the "Escrow Agreement").

1.9. "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 of 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 or the Cy Pres Distribution Plan or pertaining solely to any application for attorneys' fees, costs or expenses shall not in any way delay or preclude the Judgment from becoming final.

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

1.11. "Lead Counsel for the Plaintiff States" means Florida State Attorney General Robert A. Butterworth, c/o Lizabeth A. 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.

1.12. "Lead Counsel for the Plaintiff Settlement Class" means Joseph C. Kohn and Steven M. Steingard, Kohn, Swift & Graf, P.C., One South Broad Street, Suite 2100, Philadelphia, Pennsylvania 19107.

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

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

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

1.16. "Music Products" means prerecorded music CDs, cassettes and/or vinyl albums.

1.17. "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., et al.*, Docket No. 2:01-CV-125-P-H.

1.18. "Non-Cash Consideration" means such value other than the cash deposited into the Settlement Fund, as may be agreed to by the Settling Parties, that shall be provided by Distributor Defendants pursuant to this Settlement Agreement. The Non-Cash Consideration called for by this Settlement Agreement and the manner in which such Non-Cash Consideration shall be distributed are specified in paragraphs 2.2 and 4.9 herein.

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

1.20. "Notice Plan" means the 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, including but not limited to counsel in all State Court Litigations, is to be notified of this settlement, which shall consist, at a minimum, of publication of notice of this settlement in newspapers and other media. The giving of such notice shall commence as soon as possible after entry of the Preliminary Approval Order and shall be completed 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. (Rust Consulting, Inc., a firm retained by Plaintiffs to assist in the administration of the settlement, shall provide the short-form and long-form notice to counsel in all State Court Litigations within five (5) business days of entry of the Preliminary Approval Order. Counsel for the Distributor Defendants shall provide to



Plaintiffs the names and addresses of counsel in all State Court Litigations.) The Notice Plan must be submitted to and approved by the Court. Plaintiffs will provide Distributor Defendants a substantially final copy of the Notice Plan, including the short-form and long-form notices, simultaneously with the execution of this Settlement Agreement.

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

1.22. "Plaintiff Settlement Class" means all natural persons in the states of Colorado, Georgia, Kentucky, Louisiana, Massachusetts, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey and South Dakota, in the District of Columbia, in the U.S. Territories of Guam and American Samoa and in any of the States as to which the Court does not make findings of *parens patriae* and settlement authority pursuant to paragraphs 5.1 and 5.2 (only as to any claims for which the requisite authority is not found) 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 from January 1, 1995 to December 22, 2000, but excluding Defendants, their subsidiaries, affiliates, officers, directors, and employees and 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).

1.23. "Plaintiff States" means the States identified in paragraph 1.34 in their sovereign capacities, on behalf of themselves, and as *parens patriae* on behalf of all natural persons residing in the States who purchased Music Products from one or more Retailers during the period from January 1, 1995 to December 22, 2000, but excluding Defendants, their subsidiaries, affiliates, officers, directors, and employees and excluding 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 who exercise their right to "opt out" of participation in this Litigation).

1.24. A "Plaintiff State" means any of the states described in paragraph 1.23.

1.25. "Preliminary Approval Motion" means the motion for preliminary approval of this Settlement Agreement. The Preliminary Approval Motion shall include the Settlement Agreement and its Exhibits, as well as the Notice Plan, the Distribution Plan, and the statement of the Plaintiff States as to *parens patriae* and settlement authority described in paragraph 5.1.

1.26. "Preliminary Approval Order" means an order, as described in paragraph 5.1, substantially in the form of Exhibit 3.

1.27. "Related Parties" means past or present directors, officers, employees, partners, principals, agents, insurers, co-insurers, reinsurers, shareholders, attorneys, accountants, auditors, banks or investment banks, associates, personal or legal representatives, predecessors, successors, parents, subsidiaries, divisions, joint ventures, assigns or affiliated entities of each Distributor Defendant.

1.28. "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 any or all Distributor Defendants or any of their 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. 2:01-CV-125-P-H.

1.29. "Released Persons" means each and all of the Distributor Defendants and all of their Related Parties, including the labels distributed by Distributor Defendants and each of their respective parents, subsidiaries, divisions, affiliates, stockholders, assignors, assignees, predecessors, successors, officers, directors, employees, agents and attorneys.

1.30. "Retailer" means any rack jobber, third-party distributor or any other person or business entity engaged in the sale, at retail, of Music Products, other than Distributor Defendants and their Related Parties. "Retailer" shall not include any Music Clubs, as that term is addressed in *Trowbridge, et al. v. Sony Music Entertainment Inc., et al.*, Docket No. 2:01-CV-125-P-H.

1.31. "Settlement Fund" means all monies paid by the Distributor Defendants 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.

1.32. "Settling Parties" means, collectively, the Plaintiffs and the Distributor Defendants.

1.33. "Sony" means Sony Music Entertainment Inc.

1.34. "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.

I.35. "State Court Litigations" means the following actions currently on file in the courts indicated:

*Compact Disk Cases*, California Judicial Council Coordination Proceeding No. 4123 (Superior Court of the State of California, County of Los Angeles) (The following 18 cases are coordinated under Judicial Council Coordination Proceeding No. 4123: *Retzlaff v. BMG, et al.*, No. BC230074; *Jenkins v. BMG, et al.*, No. BC230075; *Valdez v. BMG Music, et al.*, No. BC230323; *Smith v. Capitol Records, Inc., et al.*, No. BC230516; *Smith v. Universal Music & Video Distribution Corporation, et al.*, No. BC230517; *Smith v. Warner-Elektra-Atlantic Corp., et al.*, No. BC230519; *Barry v. BMG Music, Inc., et al.*, No. BC230682; *Powles v. BMG Music, et al.*, No. BC230827; *Hannah v. BMG, et al.*, No. BC230935; *Arrington v. Sony Music Entertainment Inc., et al.*, No. BC231172; *Milligan v. Sony Music Entertainment Inc., et al.*, No. BC231173; *Lamson v. BMG Music, et al.*, No. BC232258; *Bosley v. TWI, et al.*, No. BC234870; *Krim v. Sony Music Entertainment Inc., et al.*, No. 00CC08707; *Heymann v. Sony Corp. of America, et al.*, No. GIC748089; *Hicks v. Sony Music Entertainment Inc., et al.*, No. GIC748664; *The Mauna Loa Club v. BMG Music, Inc., et al.*, No. BC246088; and *Torres v. Sony Music Entertainment Inc., et al.*, No. 64148.)

*Messina et al. v. Sony Music Entertainment Inc., et al.*, Nos. 00-13308-12; 00-13362 CA 10 (Circuit Court of the 11th Judicial District, Miami-Dade County, Florida)

*Burke, et al. v. BMG Music, et al.*, No. 00 CH 8126 (Circuit Court of Cook County, Illinois, County Department, Chancery Division)

*Dettore v. Time Warner, Inc., et al.*, No. 00-2701A (Suffolk Superior Court, Massachusetts)

*Rieck, et al. v. BMG Music, et al.*, No. MC 00-00835 (Hennepin County District Court, Fourth Judicial District, Minnesota)

*Downey v. Capitol Records, Inc., et al.*, No. MON L 4746 00 (Monmouth County Superior Court, New Jersey)

*Bauman v. EMI Music Distribution, et al.*, No. 00-110862 (Supreme Court of the State of New York, New York County)

*Cable v. Sony Music Entertainment Inc., et al.*, No. 00-C-1384 (Circuit Court of Kanawha County, West Virginia)

1.36. A "State Court Litigation" means any one of the actions referred to in paragraph 1.35.

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

1.38. "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.

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

## **2. THE SETTLEMENT TERMS**

2.1. As part of this Settlement, each Distributor Defendant shall pay the following in cash: EMD shall pay a total of six million, five hundred thousand dollars (\$6,500,000); WEA shall pay a total of thirteen million, six hundred fifty thousand dollars (\$13,650,000); Universal shall pay a total of eighteen million, eight hundred fifty thousand dollars (\$18,850,000); Sony shall pay a total of twelve million, five hundred twenty-three thousand, five hundred dollars (\$12,523,500); and BMG shall pay a total of twelve million, seven hundred seventy-six thousand, five hundred dollars (\$12,776,500).

2.1.1. EMD, WEA, Universal, BMG and Sony shall make these cash payments to the Plaintiffs, c/o the Escrow Agent appointed pursuant to paragraph 3.1 herein, by wire transfer within ten (10) business days after execution of this Settlement Agreement.

2.2. In addition to the monetary payment set forth in paragraph 2.1, Distributor Defendants shall also provide Non-Cash Consideration consisting of Music Products as defined herein. Each Distributor Defendant has provided a list of the Music Products to be supplied and Plaintiffs have accepted such list. Each Distributor Defendant's share of such Non-Cash Consideration shall be as follows: EMD shall provide eight million, five hundred thousand dollars (\$8,500,000) in Non-Cash Consideration; WEA shall provide fifteen million, seven hundred fifty thousand dollars (\$15,750,000) in Non-Cash Consideration; Universal shall provide twenty-one million, seven hundred fifty thousand dollars (\$21,750,000) in Non-Cash Consideration; Sony shall provide fourteen million, seven hundred one thousand, five hundred dollars (\$14,701,500) in Non-Cash Consideration; and BMG shall provide fourteen million, nine hundred ninety-eight thousand, five hundred dollars (\$14,998,500) in Non-Cash Consideration. For purposes of determining the amount of Non-Cash Consideration, such Consideration shall be valued at twenty percent (20%) less than manufacturer's suggested retail price as of the date such Non-Cash Consideration was selected by Lead Counsel for the Plaintiffs for inclusion among the selections available for distribution. The nature and the process for distributing this Non-Cash Consideration is specified in paragraph 4.9 herein.

2.3. Each of the Distributor Defendants warrants that, as of the date of this Settlement Agreement, it is not insolvent, nor will its payment to the Settlement Fund and any accrued interest render such Distributor Defendant insolvent within the meaning of and/or for the purposes of the United States Bankruptcy Code. If a case is commenced with respect to any Distributor Defendant 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 such Distributor Defendant, to be a preference, voidable transfer, fraudulent transfer or similar transaction, then the releases given and judgment entered in favor of such Distributor Defendant pursuant to this

Settlement Agreement, and the Settlement Agreement as it applies to such Distributor Defendant, shall be null and void.

2.4. No part of the cash payments or Non-Cash Consideration 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.

2.5. Upon the Effective Date, all remaining interest or right of each Distributor Defendant in or to the Settlement Fund shall be absolutely and forever extinguished. Upon the later of the Effective Date or the provision by a Distributor Defendant of the Non-Cash Consideration to Lead Counsel for the Plaintiff States and Lead Counsel for the Plaintiff Settlement Class, all remaining interest or right of such Distributor Defendant to such Non-Cash Consideration shall be absolutely and forever extinguished.

## 2.6 INJUNCTION

2.6.1. The Settling Parties hereby agree that the Court shall enter a permanent injunction including substantially the following provisions upon final approval of the settlement. Italicized terms in this paragraph 2.6 shall have the meanings given to them in the Decision and Order issued by the Federal Trade Commission ("FTC") with respect to each Distributor Defendant in connection with MAP on August 30, 2000, as set forth below and incorporated herein solely for purposes of this paragraph 2.6.

2.6.1.1. "*Cooperative Advertising or Other Promotional Funds*" means any payment, rebate, charge-back or other consideration provided to a *Dealer* by a Distributor Defendant in exchange for any type of advertising, promotion or marketing efforts by that *Dealer* on behalf of the Distributor Defendant. This term also includes advertising, promotion, or marketing efforts by a Distributor Defendant on behalf of one or more identified *Dealers*. Examples of cooperative advertising include, but are not limited to, free goods provided to a *Dealer* by a Distributor Defendant, and payments for newspaper advertisements, radio and

television advertisements, internet banner advertisements, posters and signs within a *Dealer's* retail stores, pricing or positioning of *Products* within a *Dealer's* retail stores, and point-of-purchase merchandising.

2.6.1.2. "*Dealer*" means any person, corporation, or entity that in the course of its business offers for sale or sells any *Product* in or into the United States, including, but not limited to, wholesale distributors, retail establishments and internet retail sites, but excluding *Record Producers*.

2.6.1.3. "*In-Store Promotion*" means any promotional effort conducted in or on the physical premises of a *Dealer* or a *Dealer*-controlled internet site, including but not limited to, signs, bin cards, end caps, hit walls, listening posts, internet banner advertisements, and promotional stickers.

2.6.1.4. "*Media Advertising*" means any promotional effort by a *Dealer* outside of the *Dealer's* physical location or *Dealer*-controlled internet site, including but not limited to, print, radio, billboards, or television.

2.6.1.5. "*Product*" means prerecorded music in physical or electronic format that is offered for sale or sold in the United States, including, but not limited to, compact discs ("CDs"), audio DVDs, audio cassettes, albums and digital audio files (*i.e.*, digital files which are delivered to the consumer electronically, to be stored on the consumer's hard drive or other storage device). "*Product*" does not include prerecorded music in physical or other electronic format manufactured or distributed by or for Record Clubs pursuant to Record Club licenses.

2.6.1.6. "*Record Producer*" means any person, corporation or entity that in the course of its business produces sound recordings for recording artists and manufactures *Product* from such sound recordings.

2.6.2. For a period ending August 30, 2007, each Distributor Defendant, directly, indirectly, or through any corporation, subsidiary, division or other device, in connection with the



offering for sale, sale or distribution of any *Product* in or into the United States of America in or affecting "trade or commerce," as defined under Section 1 of the Sherman Act, shall not, directly or indirectly:

2.6.2.1. Adopt, maintain, enforce or threaten to enforce 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 *Product* is advertised or promoted; or

2.6.2.2. Agree with any *Dealer* to control or maintain the resale price at which the *Dealer* may offer for sale or sell such Distributor Defendant's *Product*.

2.6.3. Each Distributor Defendant shall not, directly, indirectly, or through any corporation, subsidiary, division or other device, in connection with the offering for sale, sale or distribution of any *Product* in or into the United States of America in or affecting "trade or commerce," as defined under Section 1 of the Sherman Act:

2.6.3.1. Adopt, maintain, enforce or threaten to enforce any policy, practice or plan which makes the receipt of any *Cooperative Advertising or Other Promotional Funds* contingent upon the price at which any *Product* is offered for sale or sold;

2.6.3.2. Adopt, maintain, enforce or threaten to enforce any policy, practice or plan which makes the receipt of any *Cooperative Advertising or Other Promotional Funds* contingent upon the price or price level of the *Product* in any *In-Store Promotion or Media Advertising* where the *Dealer* does not seek any contribution from such Distributor Defendant for the cost of said *Media Advertising or In-Store Promotion*;

2.6.3.3. Adopt, maintain, enforce or threaten to enforce any policy, practice or plan which makes the receipt of any *Cooperative Advertising or Other Promotional Funds* contingent upon the price or price level of the *Product* in any *In-Store Promotion or Media Advertising* if such Distributor Defendant's contribution exceeds 100% of the *Dealer's* actual costs of said *Media Advertising or In-Store Promotion*;

2.6.3.4. For a period ending August 30, 2005, announce resale or minimum advertised prices of *Product* and unilaterally terminate those who fail to comply because of such failure. Notwithstanding the foregoing, nothing herein shall prohibit any Distributor Defendant from announcing suggested list prices for its *Product*.

2.6.3.5. Nothing herein shall prohibit a Distributor Defendant from providing *Cooperative Advertising or other Promotional Funds* on condition that such funds are passed through in whole or in part to the consumer (hereinafter "*Pass-Through Funds*").

2.6.4. For a period ending August 30, 2007:

2.6.4.1. Each Distributor Defendant shall, to the extent it has not already done so, amend all advertising policy statements applicable to the distribution of its *Product* to state affirmatively that such Distributor Defendant does not maintain or enforce any plan, practice or policy of the type prohibited in paragraphs 2.6.2 and 2.6.3 herein.

2.6.4.2. In each published full catalogue or published full price list in which a Distributor Defendant states suggested list prices or codes indicative of such prices, such Distributor Defendant shall state affirmatively that it does not maintain or enforce any plan, practice or policy of the type prohibited in paragraphs 2.6.2 and 2.6.3 herein. The documents described in this paragraph 2.6.4 shall be provided to Lead Counsel for the Plaintiff States upon request of Lead Counsel for the Plaintiff States.

2.6.5. Each Distributor Defendant shall serve on Lead Counsel for the Plaintiff States and Lead Counsel for the Plaintiff Settlement Class a verified written report setting forth in detail the manner and form in which such Distributor Defendant has complied with the provisions of paragraph 2.6 herein. Such report shall be served annually within ten (10) days of the filing with the FTC of a report describing compliance with the FTC Decision and Order issued August 30, 2000, and each Distributor Defendant's obligation under this paragraph shall be terminated on the date that its obligation to file such reports with the FTC terminates.

2.6.6. The injunction against Distributor Defendants shall terminate automatically at the end of ten (10) years from the entry of the Final Approval Order.

2.6.7. Any effort to enforce the terms of the injunction provided for in this paragraph 2.6 may be commenced only in the United States District Court for the District of Maine, which shall retain jurisdiction of these proceedings for this purpose, and such proceeding may be commenced only with the express written concurrence of Lead Counsel for the Plaintiff States.

## **2.7 CLASS CERTIFICATION**

2.7.1. Distributor Defendants agree to the certification of the Plaintiff Settlement Class for purposes of, and only for purposes of, this Settlement Agreement and the settlement set forth herein. Lead Counsel for the Plaintiff Settlement Class shall be solely responsible for filing (but shall supply substantially final copies to Distributor Defendants simultaneously with the execution of this Settlement Agreement) all motions and other pleadings necessary to obtain certification of the Plaintiff Settlement Class, except that Distributor Defendants shall inform the Court that they consent to such class certification.

## **3. SETTLEMENT ADMINISTRATION**

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

3.2. The Escrow Agent shall invest the cash payments 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. Distributor Defendants shall bear no risk related to the investment of the Settlement Fund.

3.3. The Escrow Agent shall disburse the Settlement Fund only 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 Non-Cash Consideration, 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 hereof.

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 Distributor Defendants 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 Distributor Defendants and their 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 Distributor Defendants and their 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)); Distributor Defendants and their insurers are not responsible and shall have no liability therefor or for any reporting requirements that may relate thereto.

3.7.4 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.

#### **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 the Litigation, including, but not limited to, fees, costs and administrative expenses related to implementation of this settlement, as described below.

4.2. A portion of the Settlement Fund shall be used, in accordance with the Escrow Agreement, to pay costs and expenses in providing proper notice of this settlement, 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 payment of attorneys' fees, expenses and costs 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 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 payment of attorneys' fees, expenses and costs 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. The Escrow Agent shall promptly pay the Court-ordered attorneys' fees, expenses and costs provided for under paragraphs 4.3 and 4.4 from the Settlement Fund after the Effective Date.

4.6. 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 The Released Persons 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; any payment to counsel for the Plaintiffs of any fee and/or expense award in connection with this Litigation (beyond the amount deposited into the Settlement Fund pursuant to this Settlement Agreement); or the allocation among counsel for the Plaintiffs, and any other person who may assert some claim thereto, of any fee and/or expense award that the Court may make in the Litigation; and Distributor Defendants need take no position with respect to such matters.

#### **4.9. DISTRIBUTION OF SETTLEMENT FUND AND NON-CASH CONSIDERATION**

4.9.1. The Plaintiffs shall submit their proposed Distribution Plan to the Court for approval along with the Preliminary Approval Motion. Plaintiffs shall provide a substantially final copy of the Distribution Plan to Distributor Defendants simultaneously with the execution of this Settlement Agreement. Distributor Defendants shall have an opportunity to comment on the adequacy of the Distribution Plan, and Lead Counsel for the Plaintiffs shall take Distributor Defendants' comments, if any, into consideration in developing a final Distribution Plan. Nothing in this Settlement Agreement shall preclude Distributor Defendants from requesting that the Court modify or not approve the Distribution Plan submitted by the Plaintiffs.

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 shall establish a claims process whereby, to the extent feasible, all funds remaining in the Settlement Fund after payment of the costs and fees set forth above shall be

distributed directly to persons who purchased Music Products from retailers between January 1, 1995 and December 22, 2000. The Distribution Plan shall provide, however, that the funds remaining in the Settlement Fund after the payment of the costs and fees set forth above shall be distributed *cy pres* under the terms of the Cy Pres Distribution Plan if the number of persons filing valid and timely claims for payment would result in such persons receiving a payment of less than five dollars (\$5.00) per claimant. The Distribution Plan shall also provide that persons filing valid and timely claims for payment shall not receive a payment per claimant greater than twenty dollars (\$20.00). Any funds remaining in the Settlement Fund after the payment of the costs and fees set forth above, and after all direct payments to Music Products purchasers under the Distribution Plan, shall be distributed *cy pres* under the terms of the Cy Pres Distribution Plan. Both the long-form and short-form notices shall clearly indicate the circumstances under which the funds remaining in the Settlement Fund after payment of the costs and fees set forth above shall be distributed *cy pres*.

4.9.3. The Distribution Plan shall specify the general plan or method in which the Music Products constituting the Non-Cash Consideration shall be distributed.

4.9.3.1. The Music Products constituting the Non-Cash Consideration have been selected by Plaintiffs from lists tendered to Plaintiffs by each of the Distributor Defendants, so as to ensure that the selected Music Products will include a diversity of music genres (including, but not limited to, current popular music, historic pop, classical music, jazz and other American historic music, and ethnic/world folk music). Each Distributor Defendant shall make its Music Products available for pickup by the Plaintiffs at a single location and at a single time (*i.e.*, no more than five (5) separate pickup locations and times) on or after the Effective Date, and on pallets of a set dimension, all as is mutually agreed upon between the Plaintiffs and each of the Distributor Defendants. Each Distributor Defendant shall be responsible for all costs associated with production of its Music Products prior to the time the Plaintiffs take physical possession of the Music Products. Plaintiffs shall be responsible for all costs associated with transporting,

storing and insuring Music Products once Plaintiffs have taken physical possession of such Music Products. Notwithstanding the foregoing, a Distributor Defendant may choose to have its Music Products picked up by Plaintiffs on a date after execution of this Agreement but prior to the Effective Date (such date to be within thirty (30) days of a notice served by the Distributor Defendant making such Music Products available). In the event that a Distributor Defendant chooses to have its Music Products picked up prior to the Effective Date as provided for in the preceding sentence, it shall retain title to the Music Products and bear the risk of loss of such products until the Effective Date and shall bear the cost of maintaining any insurance for its benefit to protect against such loss. Except with respect to a Distributor Defendant making the election described in the preceding two sentences, Plaintiffs shall not be obliged to take possession of the Non-Cash Consideration from any Distributor Defendant until thirty (30) days after the Effective Date. Should the Effective Date not occur, or if the Settlement Agreement is terminated pursuant to its terms as to a Distributor Defendant that elected to have its Music Products picked up before the Effective Date, the cost of returning or otherwise disposing of the Music Products constituting the Non-Cash Consideration provided by that Distributor Defendant shall be shared equally between Plaintiffs and that Distributor Defendant, provided, however, that if the Effective Date does not occur or if the Settlement is terminated as the result of the election of a Distributor Defendant, such Distributor Defendant shall bear the full cost of returning or otherwise disposing of the Music Products constituting the Non-Cash Consideration provided by that Distributor Defendant.

4.9.3.2. The Distribution Plan shall provide that the Non-Cash Consideration will be distributed *cy pres* in accordance with the provisions of paragraph 4.9.4 below and the *Cy Pres* Distribution Plan.

4.9.4. To the extent the Distribution Plan or this Settlement Agreement provides that the Settlement Fund and/or Non-Cash Consideration 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 set out a state-specific plan or method of allocation for the distribution of such portion of the Settlement Fund and/or Non-Cash Consideration. 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 or Non-Cash Consideration be used to further music-related purposes or programs reasonably targeted to benefit a substantial number of the persons who purchased Music Products from one or more Retailers. Cash or Non-Cash Consideration to be distributed under the Cy Pres Distribution Plan cannot supplant existing or reasonably anticipated funding.

4.9.5. It is understood and agreed by the Settling Parties that any proposed Distribution Plan or Cy Pres Distribution Plan is not a part of this 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 this Settlement Agreement, and that any order or proceedings relating to the 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, subject to a Distributor Defendant's right to elect to terminate this Settlement Agreement under paragraph 5.4.

4.9.6. To the extent that either the Distribution Plan or the Cy Pres Distribution Plan is disapproved by this Court or on appeal, the Plaintiffs shall be obligated to amend the Distribution Plan or Cy Pres Distribution Plan so as to obtain the approval of the Court.

4.9.7. 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 the Non-Cash Consideration or any funds remaining in the Settlement Fund after payment of the costs and fees set forth above in paragraph 4, and Distributor Defendants 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 and Distributor Defendants, Lead Counsel for the Plaintiffs shall file with the Court the Preliminary Approval Motion. The Preliminary Approval Motion shall include the Settlement Agreement and its Exhibits, as well as the Notice Plan and the Distribution Plan, as attachments, and a statement on behalf of each of the Plaintiff States acknowledging that the Attorney General of each of the Plaintiff States has the requisite *parens patriae* authority to represent all natural persons in his or her State and authority to settle and release all the Released Claims on behalf of such natural persons (except that the Commonwealth of Massachusetts may acknowledge that in the circumstances of this Litigation the requisite authority as to natural persons in Massachusetts resides in the Attorney General and the Plaintiff Settlement Class together). The Preliminary Approval Motion shall request entry of a Preliminary Approval Order substantially in the form of Exhibit 3 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) findings that each Attorney General representing a Plaintiff State has the requisite *parens patriae* authority to represent all natural persons in his or her respective State who purchased Music Products from one or more Retailers during the period from January 1, 1995 to December 22, 2000 (excluding those persons who exercise their right to opt out of participation in this Litigation) and has the authority to settle and release all of the Released Claims on behalf of such natural persons (except that in the circumstances of this Litigation such authority as to natural persons in Massachusetts resides in the Attorney General and the Plaintiff Settlement Class together); (iii) conditional approval of certification of the Plaintiff Settlement Class, including those natural persons, if any, in any of the States as to which the Court does not make findings of *parens patriae* and settlement authority (only as to any claims for which the requisite authority is not found); (iv) approval of the Notice Plan; (v) approval of the Distribution Plan; and (vi) 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. Simultaneously with execution of this Settlement Agreement, the Plaintiffs shall provide to Distributor Defendants a substantially final copy of the Preliminary Approval Motion (including the Notice Plan and the Distribution Plan and all other exhibits and attachments of the motion).

5.2. Within sixty (60) days following the conclusion of the Notice Period, Lead Counsel for the Plaintiffs shall file a motion seeking final approval by the Court of the settlement of this Litigation with respect to Distributor Defendants, including a determination by the Court: (i) that the settlement set forth in this Settlement Agreement shall be approved finally as fair, reasonable and adequate; (ii) that the Attorney General of each of the Plaintiff States has the requisite *parens patriae* authority to represent all natural persons in his or her State who purchased Music Products from one or more Retailers during the period from January 1, 1995 to December 22, 2000 (excluding those persons who exercise their right to opt out of participation in this Litigation) and has the authority to settle and release all of the Released Claims on behalf of such natural persons (except that in the circumstances of this Litigation such authority as to natural persons in Massachusetts resides in the Attorney General and the Plaintiff Settlement Class together); (iii) that the Plaintiff Settlement Class, including all natural persons, if any, in any of the States as to which the Court does not make findings of *parens patriae* and settlement authority (only as to any claims for which the requisite authority is not found) shall be certified; (iv) that Judgment approving the settlement, substantially in the form of Exhibit 1, should be entered; and (v) that an award of attorneys' fees and expenses should be made to counsel for the Plaintiffs.

5.3. Plaintiffs shall provide a substantially final copy of the Cy Pres Distribution Plan to Distributor Defendants at least ten (10) business days prior to filing their motion for final approval of the Settlement Agreement. Distributor Defendants shall have an opportunity to comment on the adequacy of the Cy Pres Distribution Plan, and Lead Counsel for the Plaintiffs shall take Distributor Defendants' comments, if any, into consideration in developing a final Cy

Pres Distribution Plan. Nothing in this Settlement Agreement shall preclude Distributor Defendants from requesting that the Court modify or not approve the Cy Pres Distribution Plan submitted by the Plaintiffs.

5.4. A Distributor Defendant 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/or 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 each Distributor Defendant by facsimile and by 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. A Distributor Defendant'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. A Distributor Defendant'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 such Distributor Defendant 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 Distributor Defendants' exercise of their option to terminate the agreement, unless all Distributor Defendants otherwise agree in writing. In the event a Distributor Defendant exercises this option, this Settlement Agreement shall be null and void as to that Distributor Defendant, but shall remain in effect as to all other Distributor Defendants.

participating in or maintaining any other action, aside from this Litigation, in any jurisdiction relating to or arising from the Released Claims. If the Distributor Defendants choose to file such a motion, they shall file it such that it will be considered along with the motion for final approval of the Settlement Agreement, and they will seek to have any such injunction become effective upon the Effective Date.

(b) Distributor Defendants shall provide Lead Counsel for the Plaintiffs with a substantially final copy of this motion at least ten (10) business days in advance of its filing. If Distributor Defendants request entry of a permanent injunction substantially in the form of paragraph 6.2 of Exhibit 1 hereto, Lead Counsel for the Plaintiffs shall file, on behalf of all counsel for Plaintiffs (but without prejudice to Plaintiffs' ability to object to or challenge any particular statements advanced by Distributor Defendants in support of the injunction), a brief setting forth Plaintiffs' position that: (i) Plaintiffs do not oppose entry of such injunction; (ii) any and all natural and non-natural persons or entities in the United States and its Territories who purchased Music Products from one or more Retailers during the period from January 1, 1995 to December 22, 2000 (except for Defendants, their subsidiaries, affiliates, officers, directors and employees and except for those persons or entities who have exercised their right to opt out of participation in this Litigation) are represented by a Plaintiff State and/or are members of the Plaintiff Settlement Class in this Litigation; (iii) to the extent such persons or entities are within the asserted classes identified in the State Court Litigations they are persons who are represented by a Plaintiff State and/or are members of the Plaintiff Settlement Class in this Litigation; and (iv) the Released Claims of such persons or entities are those set forth in paragraph 1.28 of this Settlement Agreement, *i.e.*,

all claims, demands, rights, liabilities, and causes of action, whether known or unknown, asserted or that could have been asserted against any or all Distributor Defendants or any of their 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. 2:01-CV-125-P-H (D. Maine).

At the request of a Distributor Defendant, in response to a letter or pleading or other application, filed or made by a plaintiff in a State Court Litigation, and to the extent permitted by the state court in which a State Court Litigation is pending, the Attorney General of a Plaintiff State in which a State Court Litigation is pending (excluding the Commonwealth of Massachusetts) (or, at his or her discretion, his or her assistant or deputy) and Lead Counsel for the Plaintiff Settlement Class (or his designated partner or associate, or co-counsel chosen by Lead Counsel provided such co-counsel has appeared as counsel in this Litigation, is familiar with the proceedings in this matter and is not counsel in any State Court Litigation or otherwise conflicted) each agree to submit a written statement(s) or brief(s) setting forth the position reflected in this paragraph 6.5(b) and/or to appear in that state court and orally present the position reflected in this paragraph 6.5(b). The Attorneys General and Lead Counsel for the Plaintiff Settlement Class shall act in good faith to make the appearances or submissions referred to in this paragraph 6.5(b) on a timely basis in light of the then current schedule in the State Court Litigation.

(c) Should the Court grant the motion for injunction referred to in this paragraph, the United States District Court for the District of Maine shall maintain jurisdiction of the Litigation for purposes of enforcing such order.

Distributor Defendant(s) the non-refundable portion of the Settlement Fund. Each Distributor Defendant requesting a refund under this paragraph 7.3 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 such Distributor Defendant(s) for a refund. If such a penalty would apply, the Escrow Agent shall notify the Distributor Defendant, which may elect in writing to defer withdrawal until such penalty no longer applies, in which case any interest earned from the date on which the Distributor Defendant first gave notice of its intention to withdraw shall be for the benefit of the Distributor Defendant.

7.3.1. If the Effective Date does not occur, or if the Settlement Agreement is terminated pursuant to its terms as to any Distributor Defendant(s), any Music Products constituting Non-Cash Consideration shall be returned to the Distributor Defendant(s) that provided those Music Products. Shipping costs or other costs of disposition shall be shared equally between the Plaintiffs and the Distributor Defendant(s), except as provided in paragraph 4.9.3.1 herein.

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 as to any Distributor Defendant(s), the parties as to which the Settlement Agreement is terminated or fails to become effective shall be restored to their respective positions in the Litigation as of January 3, 2002. In such event the terms and provisions of this Settlement Agreement, with the exception of paragraphs 3.2 – 3.7, 7.2 – 7.4, 7.5, 8.2, 8.3, 8.16 and 8.19 herein, shall have no further force and effect with respect to such parties 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 Plaintiff States, the Plaintiff Settlement Class or any of their counsel shall constitute grounds for cancellation or termination of the Settlement Agreement.

7.5. Within ten (10) business days 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 the Distributor Defendants and shall serve a copy of each such filing on William J. Kayatta, Jr., Esq., Pierce Atwood, One Monument Square, Portland, ME 04101, Liaison Counsel for the Distributor Defendants. Should plaintiffs' counsel fail to do so, counsel for Distributor Defendants are authorized to make such filings.

## **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 any Distributor Defendant as to the merits of any claim or defense. The Settling Parties agree that the amount 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 any Distributor Defendant or any of its Related Parties or any Released Persons, 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 a Distributor Defendant or its Related Parties or Released Persons in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Any Distributor Defendant 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. Except as otherwise provided in this paragraph or an order of the Court, Plaintiffs agree to suspend immediately any additional discovery against Distributor Defendants in the Litigation. Each Distributor Defendant agrees in the event any agreement settling this Litigation does not become effective as to any party to this Litigation, that, notwithstanding the dismissal of the Litigation against it pursuant to this Settlement Agreement, it shall treat as if made to a party to the Litigation requests for authentication of documents produced by such Distributor Defendant. Each Distributor Defendant agrees to make up to three (3) of its employees available

stated therein, that discovery is contemplated in the circumstances identified in paragraph 8.4) and agree to extensions of time with respect to any Court filings necessary to effectuate such stays.

8.7. The Distributor Defendants may seek from the Court a temporary injunction, to remain in effect pending final approval by the Court of the settlement of this Litigation, prohibiting each natural person within the Plaintiff States and each member of the Plaintiff Settlement Class from filing, commencing, initiating, asserting, continuing to prosecute, maintaining, intervening in or participating in any other action or proceeding, aside from this Litigation, in any jurisdiction based on, relating to or arising from the subject matter of the Released Claims until and unless such natural person or member of the Plaintiff Settlement Class timely and validly excludes himself, herself, or itself from participation in this Litigation. Distributor Defendants shall provide Lead Counsel for the Plaintiffs with a substantially final copy of their motion for a temporary injunction at least five (5) business days in advance of its filing. If Distributor Defendants request entry of a temporary injunction substantially in the form of Exhibit 4 hereto, Lead Counsel for the Plaintiffs shall file, on behalf of all counsel for Plaintiffs (but without prejudice to Plaintiffs' ability to object to or challenge any particular statements advanced by Distributor Defendants in support of the injunction), a brief setting forth Plaintiffs' position that: (i) Plaintiffs do not oppose entry of such injunction; (ii) any and all natural and non-natural persons or entities in the United States and its Territories who purchased Music Products from one or more Retailers during the period from January 1, 1995 to December 22, 2000 (except for Defendants, their subsidiaries, affiliates, officers, directors and employees and except for those persons or entities who have validly and timely excluded themselves from participation in this Litigation) are represented by a Plaintiff State and/or are members of the Plaintiff Settlement Class in this Litigation; (iii) to the extent such persons or entities are within the asserted classes identified in the State Court Litigations they are persons who are represented by a Plaintiff State and/or are members of the Plaintiff Settlement Class in this Litigation; and (iv) the Released

Claims of such persons or entities are those set forth in paragraph 1.28 of this Settlement Agreement, *i.e.*,

all claims, demands, rights, liabilities, and causes of action, whether known or unknown, asserted or that could have been asserted against any or all Distributor Defendants or any of their 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. 2:01-CV-125-P-H (D. Maine).

At the request of a Distributor Defendant, in response to a letter or pleading or other application, filed or made by a plaintiff in a State Court Litigation, and to the extent permitted by the state court in which a State Court Litigation is pending, the Attorney General of a Plaintiff State in which a State Court Litigation is pending (excluding the Commonwealth of Massachusetts) (or, at his or her discretion, his or her assistant or deputy) and Lead Counsel for the Plaintiff Settlement Class (or his designated partner or associate, or co-counsel chosen by Lead Counsel provided that such co-counsel has appeared as counsel in this Litigation, is familiar with the proceedings in this Litigation and is not counsel in any State Court Litigation or otherwise conflicted) each agree to submit a written statement(s) or brief(s) setting forth the position reflected in this paragraph 8.7 and/or to appear in that state court and orally present the position reflected in this paragraph 8.7. The Attorneys General and Lead Counsel for the Plaintiff Settlement Class shall act in good faith

to make the appearances or submissions referred to in this paragraph 8.7 on a timely basis in light of the then current schedule in the State Court Litigation.

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

8.9. 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.

8.10. 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.

8.11. 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.

8.12. 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.

8.13. 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 by Plaintiffs with the Clerk of the Court for the United States District Court for the District of Maine on Monday, September 30, 2002, before noon, Eastern Daylight Time, and shall thereby become publicly available.

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

8.15. The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of 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.

8.16. All agreements made and orders entered during the course of the Litigation related to the confidentiality of information shall survive this Settlement Agreement. The parties' obligations under paragraph 6.5 herein shall continue in full force and effect after the Effective Date. The provisions of this paragraph are intended to avoid any ambiguity and shall give rise to no inference regarding the survival *vel non* of any other provision of this Settlement Agreement.

8.17. 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.

8.18. 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.

8.19. Upon final resolution of the Litigation, and of *Trowbridge, et al. v. Sony Music Entertainment Inc. et al.*, Docket No. 2:01-CV-125-P-H, as to all defendants in that action, Plaintiffs and Defendants and their respective counsel will arrange for the disposition of documents and other information they have received from other parties or non-parties to the Litigation in accordance with the Confidentiality Order entered in this Litigation on January 5, 2001.

Dated: September \_\_, 2002

**CO-LEAD COUNSEL FOR PLAINTIFF STATES:**

A handwritten signature in black ink, appearing to read "R. Butterworth", written over a horizontal line.

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



Dated: September 26 2002

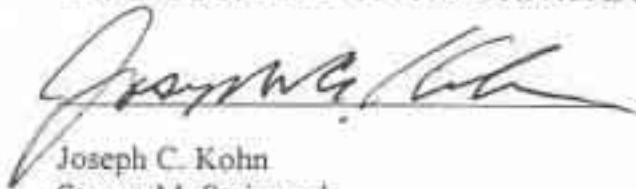
**CO-LEAD COUNSEL FOR PLAINTIFF STATES:**

*Linda Gargiulo*

Eliot L. Spitzer  
Attorney General of New York  
Jay Himes  
Chief, Antitrust Bureau  
By: Linda Gargiulo  
Assistant Attorney General  
120 Broadway, Suite 26-01  
New York, NY 10271

Dated: September \_\_, 2002

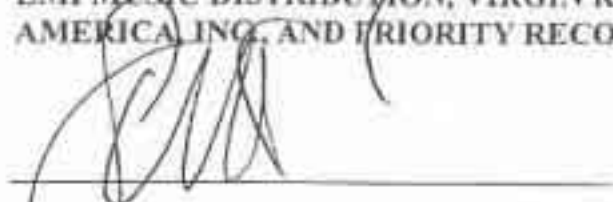
**LEAD COUNSEL FOR THE PRIVATE PLAINTIFFS:**

A handwritten signature in black ink, appearing to read "Joseph C. Kohn". The signature is fluid and cursive, with a long horizontal stroke at the end.

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

Dated: September 26, 2002

COUNSEL FOR CAPITOL RECORDS, INC. D/B/A  
EMI MUSIC DISTRIBUTION, VIRGIN RECORDS  
AMERICA, INC. AND PRIORITY RECORDS LLC:

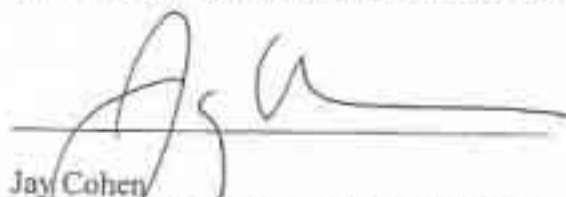


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Irving Scher  
Scott Martin  
WEIL, GOTSHAL & MANGES LLP  
767 Fifth Avenue  
New York, NY 10153

Dated: September 16, 2002

COUNSEL FOR 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:

A handwritten signature in black ink, appearing to read "Jay Cohen", is written over a horizontal line. The signature is stylized and cursive.

Jay Cohen  
PAUL, WEISS, RIFKIND, WHARTON  
& GARRISON  
1285 Avenue of the Americas  
New York, NY 10019-6064

Dated: September 26 2002

COUNSEL FOR UNIVERSAL MUSIC & VIDEO  
DISTRIBUTION CORPORATION, UNIVERSAL MUSIC  
GROUP, INC., AND UMG RECORDINGS, INC.

Glenn D. Pomerantz / SPG

Glenn D. Pomerantz  
Stuart N. Senator  
MUNGER, TOLLES & OLSON LLP  
355 South Grand Avenue  
Thirty Fifth Floor  
Los Angeles, CA 90071-1560

Dated: September 26, 2002

**COUNSEL FOR BERTELSMANN MUSIC GROUP, INC.  
AND BMG MUSIC:**

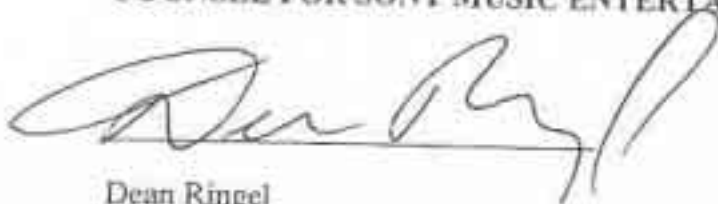
Robert E. Bloch

Robert E. Bloch  
Mitchell D. Raup  
Kerry Lynn Edwards  
MAYER, BROWN, ROWE & MAW  
1909 K Street, N.W.  
Washington, DC 20006



Dated: September 26 2002

**COUNSEL FOR SONY MUSIC ENTERTAINMENT INC.:**

A handwritten signature in black ink, appearing to read "Dean Ringel", written over a horizontal line.

Dean Ringel  
Janet A. Beer  
CAHILL GORDON & REINDEL  
80 Pine Street  
New York, NY 10005



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. 2:01-CV-125-P-H.

[PROPOSED] FINAL JUDGMENT AND ORDER

WHEREAS the States, Commonwealths and Territories of 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, through their Attorneys General, (the "Plaintiff States" as defined below), and the Named Class Plaintiffs (on behalf of themselves and each member of the "Plaintiff Settlement Class," as defined below), by and through their counsel of record in the Litigation, have filed Complaints for damages, injunctive relief and, in the case of the Plaintiff States, civil penalties against the defendants Capitol Records, Inc. d/b/a EMI Music Distribution, Virgin Records America, Inc., and Priority Records LLC (collectively, "EMD"), 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 (collectively "WEA"), Universal Music & Video Distribution Corporation, Universal Music Group, Inc., and UMG Recordings, Inc. (collectively "Universal"), Bertelsmann Music Group, Inc. and BMG Music (collectively "BMG"), and Sony Music Entertainment Inc. ("Sony") (collectively referred to hereafter as "Distributor De-

fendants”), alleging violations of applicable federal and state antitrust and/or unfair competition and/or consumer protection laws;

WHEREAS the Plaintiff States, through their Attorneys General, and the Named Class Plaintiffs (on behalf of themselves and each member of the “Plaintiff Settlement Class,” as defined below), by and through their counsel of record in the Litigation, also allege in those Complaints causes of action for damages, injunctive relief and, in the case of the Plaintiff States, civil penalties against the defendants MTS, Inc./Tower Records (“Tower”), Trans World Entertainment Corp. (“Trans World”), and Musicland Stores Corp. (“Musicland”), alleging violations of applicable federal and state antitrust and/or unfair competition and/or consumer protection laws;

WHEREAS the Plaintiff States, the Named Class Plaintiffs, and Distributor Defendants desire to resolve any and all disputes arising from the Complaints; the Plaintiff States, Named Class Plaintiffs, and Distributor Defendants executed a settlement agreement on \_\_\_\_\_ (the Distributor Defendant Settlement Agreement); the Distributor Defendant Settlement Agreement was filed with the Court on \_\_\_\_\_; and the Distributor Defendant Settlement Agreement does not constitute any evidence against or an admission of liability by the Distributor Defendants;

WHEREAS the Plaintiff States, the Named Class Plaintiffs, and Musicland, Tower and Trans World (hereinafter “Settling Retailer Defendants”) desire to resolve any and all disputes arising from the Complaints; the Plaintiff States, Named Class Plaintiffs, and Musicland executed a settlement agreement on \_\_\_\_\_ (the “Musicland Settlement Agreement”); the Plaintiff States, Named Class Plaintiffs, and Tower executed a settlement agreement on \_\_\_\_\_ (the “Tower Settlement Agreement”); the Plaintiff States, Named Class Plaintiffs, and Trans World executed a settlement agreement on \_\_\_\_\_ (the “Trans World Settlement Agreement”); the Musicland, Tower and Trans World Settlement Agreements were filed with the Court on \_\_\_\_\_; and the Musicland, Tower and Trans World Settlement Agreements do not constitute any evidence against or an admission of liability by the Settling Retailer Defendants;

WHEREAS in full and final settlement of the claims set forth in the Complaints, Distributor Defendants have paid into escrow the following cash amounts: EMD has paid a total of six million, five hundred thousand dollars (\$6,500,000); WEA has paid a total of thirteen million, six hundred fifty thousand dollars (\$13,650,000); Universal has paid a total of eighteen million, eight hundred fifty thousand dollars (\$18,850,000); Sony has paid a total of twelve million, five hundred twenty-three thousand, five hundred dollars (\$12,523,500); and BMG has paid a total of twelve million, seven hundred seventy-six thousand, five hundred dollars (\$12,776,500);

WHEREAS in full and final settlement of the claims set forth in the Complaints, Settling Retailer Defendants have paid into escrow the following cash amounts: Musicland has paid [amount]; Tower has paid or will pay [amount]; Trans World has paid [amount];

WHEREAS in full and final settlement of the claims set forth in the Complaints, Distributor Defendants have provided the following Non-Cash Consideration: EMD eight million, five hundred thousand dollars (\$8,500,000) in Non-Cash Consideration; WEA fifteen million, seven hundred fifty thousand dollars (\$15,750,000) in Non-Cash Consideration; Universal twenty one million, seven hundred fifty thousand dollars (\$21,750,000) in Non-Cash Consideration; Sony fourteen million, seven hundred one thousand, five hundred dollars (\$14,701,500) in Non-Cash Consideration; and BMG fourteen million, nine hundred ninety-eight thousand, five hundred dollars (\$14,998,500) in Non-Cash Consideration;

WHEREAS the Plaintiff States and Named Class Plaintiffs have each filed amended Complaints as called for in the Distributor Defendant Settlement Agreement;

WHEREAS the Settling Retailer Defendants and Distributor Defendants have agreed to entry of this Final Judgment and Order, including the injunctive provisions herein;

WHEREAS Plaintiffs have agreed to the release of claims specified in the Settlement Agreements and incorporated into this Order;

WHEREAS pursuant to the Preliminary Approval Order, Notice of the Settlement Agreements was given to natural persons in the Plaintiff States and members of the putative Plaintiff Settlement Class, in accordance with 15 U.S.C. § 15c(b), applicable principles of state law, Federal Rules of Civil Procedure 23(c)(2) and 23(e), and the requirements of due process;

WHEREAS an opportunity to be heard was given to all persons requesting to be heard in accordance with this Court's orders. The Court has reviewed and considered the terms of the Settlement Agreements, the submissions of the parties in support thereof, and the comments received in response to the Notice. After holding a hearing on \_\_\_\_\_ at which all interested parties were given an opportunity to be heard;

NOW, THEREFORE, before the taking of any testimony, without trial or adjudication of any issue of fact or law herein, without any admission of liability or wrongdoing by Settling Retailer Defendants or Distributor Defendants, and upon the consent of the parties hereto.

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

**I.**

**JURISDICTION**

1. The Court has jurisdiction over the subject matter of this action and the parties hereto. The Plaintiffs brought this action asserting claims under Section 1 of the Sherman Act, 15 U.S.C. § 1, and claims under state antitrust and unfair acts, practices or competition laws and common law. Jurisdiction lies in this Court pursuant to 28 U.S.C. §§ 1331, 1337 and 1367(a). Venue is proper in the District of the Maine.

**II.**

**DEFINITIONS**

As used in this Final Judgment and Order, the following definitions shall apply:

2.1. "BMG" means Bertelsmann Music Group, Inc. and BMG Music.



2.2. "Complaints" means the complaints filed in the Litigation by Plaintiffs.

2.3. "Cooperative Advertising or Other Promotional Funds" means, for purposes of the injunctive provisions of paragraph 5.1 herein, any payment, rebate, charge-back or other consideration provided to a Dealer by a Distributor Defendant in exchange for any type of advertising, promotion or marketing efforts by that Dealer on behalf of the Distributor Defendant. This term also includes advertising, promotion, or marketing efforts by a Distributor Defendant on behalf of one or more identified Dealers. Examples of cooperative advertising include, but are not limited to, free goods provided to a Dealer by a Distributor Defendant, and payments for newspaper advertisements, radio and television advertisements, internet banner advertisements, posters and signs within a Dealer's retail stores, pricing or positioning of Products within a Dealer's retail stores, and point-of-purchase merchandising.

2.4. "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) and Non-Cash Consideration designated in the Distribution Plan for *cy pres* distribution. The Cy Pres Distribution Plan was submitted to the Court with the motion for final approval of the settlement of this Litigation and by the terms of the Settlement Agreements is not part of the Settlement Agreements.

2.5. "Dealer" means, for purposes of the injunctive provisions of paragraph 5.1 herein, any person, corporation, or entity that in the course of its business offers for sale or sells any Product in or into the United States, including, but not limited to, wholesale distributors, retail establishments, and internet retail sites, but excluding Record Producers.

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

2.7. "Distribution Plan" means the plan or method of allocation of the Settlement Fund (after payment of attorneys' fees, costs, and expenses) and the Non-Cash Consideration. This plan was submitted to the Court with the motion for preliminary approval of the settle-

2.16. "Media Advertising" means, for purposes of the injunctive provisions of paragraph 5.1 herein, any promotional effort by a Dealer outside of the Dealer's physical location or Dealer-controlled internet site, including but not limited to, print, radio, billboards, or television.

2.17. "Music Products" means pre-recorded music CDs, cassettes and/or vinyl albums.

2.18. "Musicland" means Musicland Stores Corp.

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

2.20. "Non-Cash Consideration" means such value other than the cash deposited into the Settlement Fund that has been or will be provided by Distributor Defendants pursuant to the Distributor Settlement Agreement.

2.21. "Notice" means the notice provided to natural persons in the Plaintiff States and members of the putative Plaintiff Settlement Class pursuant to the Notice Plan.

2.22. "Notice Plan" means the Notice Plan preliminarily approved by this Court in the Preliminary Approval Order.

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

2.24. "Plaintiff Settlement Class" means all natural persons in the states of Colorado, Georgia, Kentucky, Louisiana, Massachusetts, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey and South Dakota, in the District of Columbia, and in 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 from

January 1, 1995 to December 22, 2000, but excluding Defendants, their subsidiaries, affiliates, officers, directors, and employees and excluding those persons or entities who have timely and validly requested exclusion from participation in this Litigation in response to the Notice provided under the Notice Plan (*i.e.*, those persons or entities who have exercised their right to "opt out" of participation in this Litigation).

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

2.26. "Preliminary Approval Order" means the Order, entered by this Court on [date], preliminarily approving the Settlement Agreements and the Notice Plan.

2.27. "Product" means, for purposes of the injunctive provisions of paragraph 5.1 herein, prerecorded music in physical or electronic format that is offered for sale or sold in the United States, including, but not limited to, compact discs ("CDs"), audio DVDs, audio cassettes, albums and digital audio files (*i.e.*, digital files which are delivered to the consumer electronically, to be stored on the consumer's hard drive or other storage device). "Product" does not include prerecorded music in physical or other electronic format manufactured or distributed by or for Record Clubs pursuant to Record Club licenses.

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. 2:01-CV-125-P-H.

2.31. "Released Persons" means each and all of the Settling Retailer Defendants and Distributor Defendants and all of their Related Parties, including the labels distributed by Distributor Defendants and each of their respective parents, subsidiaries, divisions, affiliates, stockholders, assignors, assignees, predecessors, successors, officers, directors, employees, agents and attorneys.

2.32. "Retailer" means any rack jobber, third-party distributor or any other person or business entity engaged in the sale, at retail, of Music Products, other than Distributor Defendants and their Related Parties. "Retailer" does not include any Music Clubs, as that term is addressed in *Trowbridge, et al. v. Sony Music Entertainment Inc., et al.*, Docket No. 2:01-CV-125-P-H.

2.33. "Settlement Agreements" means the Settlement Agreement entered into between Plaintiffs and Distributor Defendants, dated \_\_\_\_\_; the Settlement Agreement entered into between Plaintiffs and Tower, dated \_\_\_\_\_; the Settlement Agreement entered into between Plaintiffs and Musicland, dated \_\_\_\_\_; and the Settlement Agreement entered into between Plaintiffs and Trans World, dated \_\_\_\_\_.

2.34. "Settlement Fund" means all monies paid (or, in the case of Tower, to be paid) by the Settling Retailer Defendants and Distributor Defendants to Plaintiffs, in exchange for the settlement and release of the Released Claims, together with any interest earned on such monies.

2.35. "Settlements" means the settlements encompassed by the Settlement Agreements.

2.39. A "State Court Litigation" means any one of the actions referred to in paragraph 2.38.

2.40. "Tower" means MTS, Inc., dba Tower Records.

2.41. "Trans World" means Trans World Entertainment Corp.

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

2.43. "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.

### III.

#### APPLICABILITY

3. This Final Judgment and Order shall apply to the Plaintiffs, the Settling Retailer Defendants and the Distributor Defendants.

### IV.

#### FINAL APPROVAL OF SETTLEMENTS AND CERTIFICATION OF THE SETTLEMENT CLASS

4.1. With respect to the claims set forth in the Complaints, the Court confirms its Preliminary Approval Order and finds under the circumstances of these Settlements that the prerequisites to a class action set forth in Federal Rule of Civil Procedure 23 are satisfied, that the questions of law and fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Accordingly, for the purpose of these Settlements only, the Plaintiff Settlement Class is hereby certified, consisting of all natural persons in the states of Colorado, Georgia, Kentucky, Louisiana, Massachusetts, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey and South Dakota, in the District of Columbia, and in 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 from January 1, 1995 to December 22, 2000, but excluding Defendants, their subsidiaries, affiliates, officers, directors, and employees and excluding those persons or entities who have timely and validly requested exclusion from participation in this Litigation.

4.2 The Court hereby finds that the Plaintiff States consist of the States, Commonwealths and Territories of 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 in their sovereign capacities, on behalf of themselves, and as *parens patriae* on behalf of all natural persons residing in these States who purchased Music Products from one or more Retailers during the period from January 1, 1995 to December 22, 2000, but excluding Defendants, their subsidiaries, affiliates, officers, directors, and employees and excluding those persons who have timely and validly exercised their right to opt out of participation in this Litigation. The Court finds that the Attorneys General of each of the Plaintiff States have the *parens patriae* authority to represent such natural persons within each of the Plaintiff States and have the authority to settle and release all the Released Claims on behalf of such natural persons, except that in the circumstances of this Litigation such authority as to natural persons in Massachusetts resides in the Attorney General and the Plaintiff Settlement Class together.

4.3 The Court hereby finds that (i) any and all natural and non-natural persons or entities in the United States and its Territories who purchased Music Products from one or more Retailers during the period from January 1, 1995 to December 22, 2000 (except for Defendants, their subsidiaries, affiliates, officers, directors and employees and those persons or entities who have validly and timely exercised their right to opt out of participation in this Litigation) are repre-



5/11/01

sered by a Plaintiff State and/or are members of the Plaintiff Settlement Class in this Litigation; (ii) to the extent such persons or entities are within the asserted classes identified in the State Court Litigations they are persons who are represented by a Plaintiff State and/or are members of the Plaintiff Settlement Class in this Litigation; and (iii) the Released Claims of such persons or entities are those set forth in paragraphs 2.30 and 6.1 of this Final Judgment and Order, *i.e.*,

all claims, demands, rights, liabilities, and causes of action, whether known or unknown, asserted or that could have been asserted against the 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. 2:01-CV-125-P-H.

4.4. The Court finds that the Notice and the Notice Plan constitute the best notice practicable under the circumstances and constitutes due and sufficient notice.

4.5. The terms of the Settlement Agreements are adjudged as fair, reasonable and adequate and in the best interests of Plaintiffs as a whole, and satisfy the requirements of 15 U.S.C. § 15c(b), applicable principles of state law, Federal Rule of Civil Procedure 23(c)(2) and 23(e), and due process.

4.6. The Court finds that the Settlements are entered into in good faith by the parties hereto and that no Released Person shall have a right of contribution or indemnity from any other Released Person.



4.7. The terms of the Settlement Agreements are hereby approved, and the parties are directed to implement the Settlements in accordance with their terms.

4.8. The Distribution Plan and the Cy Pres Distribution Plan are adjudged as fair, reasonable and adequate and are hereby approved. Plaintiffs are directed to cause the Settlement Fund and the Non-Cash Consideration to be distributed in accordance with said Plan(s).

4.9. All natural persons in the Plaintiff States and members of the putative Plaintiff Settlement Class were afforded the opportunity to exclude themselves from participation in this Litigation.

4.10. No part of the cash payments made by Settling Retailer Defendants and Distributor Defendants or of the Non-Cash Consideration provided by Distributor Defendants pursuant to the Settlement Agreements shall constitute, nor shall they be construed or treated as constituting, a payment in lieu of treble damages, fines, penalties, forfeitures or punitive recoveries under any state or federal laws, rules or regulations, or any other applicable statute or provision.

## V.

### INJUNCTIONS

5.1 The following injunction is hereby entered against Distributor Defendants as part of this Final Judgment and Order:

5.1.1. For a period ending August 30, 2007, each Distributor Defendant, directly, indirectly, or through any corporation, subsidiary, division or other device, in connection with the offering for sale, sale or distribution of any Product in or into the United States of America in or affecting "trade or commerce," as defined under Section 1 of the Sherman Act, shall not, directly or indirectly:

5.1.1.1. Adopt, maintain, enforce or threaten to enforce 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 Product is advertised or promoted; or

5.1.1.2. Agree with any Dealer to control or maintain the resale price at which the Dealer may offer for sale or sell such Distributor Defendant's Product.

5.1.2. Each Distributor Defendant shall not, directly, indirectly, or through any corporation, subsidiary, division or other device, in connection with the offering for sale, sale or distribution of any Product in or into the United States of America in or affecting "trade or commerce," as defined under Section 1 of the Sherman Act:

5.1.2.1. Adopt, maintain, enforce or threaten to enforce any policy, practice or plan which makes the receipt of any Cooperative Advertising or Other Promotional Funds contingent upon the price at which any Product is offered for sale or sold;

5.1.2.2. Adopt, maintain, enforce or threaten to enforce any policy, practice or plan which makes the receipt of any Cooperative Advertising or Other Promotional Funds contingent upon the price or price level of the Product in any In-Store Promotion or Media Advertising where the Dealer does not seek any contribution from such Distributor Defendant for the cost of said Media Advertising or In-Store Promotion;

5.1.2.3. Adopt, maintain, enforce or threaten to enforce any policy, practice or plan which makes the receipt of any Cooperative Advertising or Other Promotional Funds contingent upon the price or price level of the Product in any In-Store Promotion or Media Advertising if such Distributor Defendant's contribution exceeds 100% of the Dealer's actual costs of said Media Advertising or In-Store Promotion;

5.1.2.4. For a period ending August 30, 2005, announce resale or minimum advertised prices of Product and unilaterally terminate those who fail to comply because of such failure. Notwithstanding the foregoing, nothing herein shall prohibit any Distributor Defendant from announcing suggested list prices for its Product.

ings for this purpose, and such proceeding may be commenced only with the express written concurrence of Lead Counsel for the Plaintiff States.

5.2 The following injunction is hereby entered against Settling Retailer Defendants as part of this Final Judgment and Order:

5.2.1. For a period of five (5) years, the Settling Retailer Defendants shall not, directly, indirectly, or through any corporation, subsidiary, division, or other device:

5.2.1.1. Solicit, demand, request, advocate, or encourage any Distributor or wholesaler of Music Products 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 Products are advertised, promoted, offered or sold;

5.2.1.2. Solicit, demand, request, advocate, or encourage any Distributor or wholesaler of Music Products to adopt or implement any policy, practice or plan which sets a price or price level at which any Music Products are advertised, promoted, offered or sold;

5.2.1.3. Nothing herein shall prohibit each Settling Retailer Defendant from individually soliciting, demanding, requesting, advocating or encouraging any Distributor Defendant to provide Cooperative Advertising or Other Promotional Funds to such Settling Retailer Defendant, or to provide any discounts, rebates, or reductions on any wholesale prices for Music Products to such Settling Retailer Defendant, on the condition that such funds, or such discounts, rebates, or reductions, are passed through in whole or in part to the consumer.

5.2.2. For a period of five (5) years, each Settling Retailer Defendant shall include the terms of such injunction in any and all manuals either containing any advertising policy statements applicable 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. Each Settling Retailer Defendant shall make reasonable efforts to ensure

that any employee or manager who interacts with distributors or wholesalers of Music Products as part of his or her regular duties is aware of the terms of this injunction.

## VI.

### DISMISSAL OF ACTIONS AND RELEASES OF CLAIMS

6.1 Subject to the provisions of Section IX of this Final Judgment and Order, the Complaints are dismissed with prejudice. The Plaintiffs are barred from further prosecution of the Released Claims, and the Released Persons are released and forever discharged from liability for the Released Claims.

6.2 The following injunction is hereby entered: All members of the Plaintiff Settlement Class and all natural persons within the Plaintiff States are permanently enjoined from filing, commencing, initiating, asserting, continuing to prosecute, intervening in, participating in or maintaining in any jurisdiction any action or claim, other than this Litigation, whether known or unknown, asserted or that could have been asserted against the Released Persons in connection with the facts, transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act alleged in the Litigation including, without limitation, any Released Claims, *i.e.*,

all claims, demands, rights, liabilities, and causes of action, whether known or unknown, asserted or that could have been asserted against 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. 2:01-CV-125-P-H.

VII.

FEES AND COSTS

7.1. The Court approves the expenditure of \$ \_\_\_\_\_ from the Settlement Fund to reimburse counsel for the Plaintiff States and Plaintiff Settlement Class for the costs associated with administering the Settlement Agreements and executing the Notice Plan.

7.2. The Court approves the expenditure of \$ \_\_\_\_\_ from the Settlement Fund to reimburse counsel for the Plaintiff States for payment of attorneys' fees, expenses and costs. 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 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.

7.3. The Court approves the expenditure of \$ \_\_\_\_\_ from the Settlement Fund to reimburse counsel for the Plaintiff Settlement Class for payment of attorneys' fees, expenses and costs, in accordance with the allocation formula approved by the Court.



**EXHIBIT 2: ACTIONS CONSOLIDATED FOR  
PRETRIAL PURPOSES IN MDL PROCEEDING NO. 1361  
(not including *Trowbridge, et al. v. Sony Music  
Entertainment Inc., et al.*, No. 2:01-CV-125-P-H)**

Originating District	Case Name	District of Maine Docket Number
Central California	Michaelsen v. Capitol Records, Inc., et al.	2:00-309-P-H
Central California	Keel v. Time-Warner, Inc., et al.	2:00-310-P-H
Central California	Martinez, et al. v. EMI Music Distribution, et al.	2:00-311-P-H
Central California	Kandell v. Capitol Records, Inc., et al.	2:00-312-P-H
Central California	Levine, et al. v. Capitol Records, Inc., et al.	2:00-313-P-H
Central California	Feldman, et al. v. Capitol Records, Inc., et al.	2:00-314-P-H
Central California	Kasky v. BMG Music, et al.	2:00-315-P-H
Central California	Williamson, et al. v. BMG Music, et al.	2:00-316-P-H
Central California	Halper v. EMI Music Distribution, et al.	2:00-317-P-H
Central California	DeQuine v. Sony Music Entertainment, Inc., et al.	2:00-318-P-H
Northern California	Markowitz v. Sony Music Entertainment, Inc., et al.	2:00-319-P-H
Southern California	Garcia v. Sony Music Entertainment, Inc., et al.	2:00-320-P-H
Connecticut	Ariola, et al. v. BMG Music, et al.	2:00-321-P-H
Connecticut	Esposito v. Sony Music Entertainment, Inc., et al.	2:00-322-P-H
District of Columbia	Salzberg v. Sony Music Entertainment, Inc., et al.	2:00-323-P-H
Middle Florida	Mayo v. Sony Music Entertainment, Inc., et al.	2:00-324-P-H
Northern Illinois	Samotny, et al. v. BMG Music, et al.	2:00-325-P-H
Northern Illinois	Manning v. Sony Music Entertainment, Inc., et al.	2:00-326-P-H
Southern Illinois	Adams v. BMG Music, Inc., et al.	2:00-327-P-H
Southern Illinois	Mitchell v. BMG Music, et al.	2:00-328-P-H
Southern Illinois	Robertson v. EMI Music Distribution, Inc., et al.	2:00-329-P-H
Southern Illinois	Hickey v. Sony Music Entertainment, Inc., et al.	2:00-330-P-H
Eastern Louisiana	Chacon, et al. v. Universal Music & Videos Distribution, Inc., et al.	2:00-331-P-H
Eastern Louisiana	Blesius, et al. v. Universal Music & Videos Distribution, Corp., et al.	2:00-332-P-H
Massachusetts	Nardella v. BMG Music, et al.	2:00-333-P-H



Eastern New York	Dornfeld v. BMG Music, et al.	2:00-334-P-H
Eastern New York	Delgado v. Universal Music & Videos Distribution, Inc., et al.	2:00-335-P-H
Eastern New York	Schwam v. BMG Music, et al.	2:00-336-P-H
Eastern New York	Noll v. BMG Music, et al.	2:00-337-P-H
Southern New York	Glazebrook v. Universal Music & Videos Distribution, Inc., et al.	2:00-338-P-H
Southern New York	Brown, et al. v. EMI Music Distribution, et al.	2:00-339-P-H
Southern New York	Goldenstein v. BMG Music, et al.	2:00-340-P-H
Southern New York	Hunt v. EMI Music Distribution, et al.	2:00-341-P-H
Southern New York	Regula v. EMI Music Distribution, et al.	2:00-342-P-H
Southern New York	Goz v. Universal Music & Videos Distribution, Inc., et al.	2:00-343-P-H
Southern New York	Rosenberg v. Sony Music Entertainment, Inc., et al.	2:00-344-P-H
Southern New York	Ippolito v. Sony Music Entertainment, Inc., et al.	2:00-345-P-H
Eastern Pennsylvania	Gallagher v. BMG Music, et al.	2:00-346-P-H
Eastern Pennsylvania	Markowitz v. Sony Music Entertainment, Inc., et al.	2:00-347-P-H
Eastern Pennsylvania	Reinhart v. Time-Warner, Inc., et al.	2:00-348-P-H
Eastern Texas	Clark, et al. v. Capitol Records, Inc., et al.	2:00-349-P-H
Maine	Mazerolle v. Time-Warner, Inc.	2:00cv00355
Vermont	Pilus v. Sony Music Entertainment, Inc.	2:00cv00370
Eastern Pennsylvania	Reinhart v. Time-Warner, Inc.	2:01cv00017
Central California	Fishman v. BMG Music, Inc.	2:01cv00018
Middle Louisiana	Flaherty v. BMG Music, Inc.	2:01cv00021
Eastern Louisiana	Chacon v. Best Buy Co., Inc.	2:01cv00023
Central California	Fishman v. BMG Music, Inc.	2:01cv00026
Central California	Rice v. EMI Music Distribution	2:01cv00028
New Jersey	Eagle v. MTS Inc.	2:01cv00029
Northern Alabama	Patterson v. Sony Music Entertainment	2:01cv00045
Eastern Tennessee	Lacy v. BMG Music	2:01cv00046
Southern New York	State of Florida v. BMG Music Inc.	2:01cv00084



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. 2:01-CV-125-P-H.

[PROPOSED] ORDER PRELIMINARILY  
APPROVING SETTLEMENTS

WHEREAS the States, Commonwealths or Territories of 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, through their Attorneys General (the "Plaintiff States," as defined below), and the Named Class Plaintiffs (on behalf of themselves and each member of the "Plaintiff Settlement Class," as defined below), by and through their counsel of record in the Litigation, have filed Complaints for damages, injunctive relief and, in the case of the Plaintiff States, civil penalties against the defendants Capitol Records, Inc. d/b/a EMI Music Distribution, Virgin Records America, Inc., and Priority Records LLC (collectively, "EMD"), 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 (collectively "WEA"), Universal Music & Video Distribution Corporation, Universal Music Group, Inc., and UMG Recordings, Inc. (collectively "Universal"), Bertelsmann Music Group, Inc. and BMG Music (collectively "BMG"), and Sony Music Entertainment Inc. ("Sony") (collectively referred to hereafter as "Distributor De-

endants”), alleging violations of applicable federal and state antitrust laws and/or unfair competition and/or consumer protection laws:

WHEREAS the Plaintiff States, through their Attorneys General, and the Named Class Plaintiffs (on behalf of themselves and each member of the “Plaintiff Settlement Class,” as defined below), by and through their counsel of record in the Litigation, also allege in those Complaints causes of action for damages, injunctive relief and, in the case of the Plaintiff States, civil penalties against the defendants MTS, Inc./Tower Records (“Tower”), Trans World Entertainment Corp. (“Trans World”), and Musicland Stores Corp. (“Musicland”), alleging violations of applicable federal and state antitrust laws and/or unfair competition and/or consumer protection laws;

WHEREAS the Plaintiff States, the Named Class Plaintiffs, and Distributor Defendants desire to resolve any and all disputes arising from the Complaints; the Plaintiff States, Named Class Plaintiffs, and Distributor Defendants executed a settlement agreement on \_\_\_\_\_ (the “Distributor Defendant Settlement Agreement”); and the Distributor Defendant Settlement Agreement does not constitute any evidence against or an admission of liability by the Distributor Defendants;

WHEREAS the Plaintiff States, the Named Class Plaintiffs, and Musicland, Tower and Trans World (hereinafter “Settling Retailer Defendants”) desire to resolve any and all disputes arising from the Complaints; the Plaintiff States, Named Class Plaintiffs, and Musicland executed a settlement agreement on \_\_\_\_\_ (the “Musicland Settlement Agreement”); the Plaintiff States, Named Class Plaintiffs, and Tower executed a settlement agreement on \_\_\_\_\_ (the “Tower Settlement Agreement”); the Plaintiff States, Named Class Plaintiffs and Trans World executed a settlement agreement (the “Trans World Settlement Agreement”) on \_\_\_\_\_; and the Musicland, Tower and Trans World Settlement Agreements do not constitute any evidence against or an admission of liability by the Settling Retailer Defendants;

WHEREAS in full and final settlement of the claims set forth in the Complaints, Distributor Defendants have paid into escrow the following cash amounts: EMD has paid a total

of six million, five hundred thousand dollars (\$6,500,000); WEA has paid a total of thirteen million, six hundred fifty thousand dollars (\$13,650,000); Universal has paid a total of eighteen million, eight hundred fifty thousand dollars (\$18,850,000); Sony has paid a total of twelve million, five hundred twenty-three thousand, five hundred dollars (\$12,523,500); and BMG has paid a total of twelve million, seven hundred seventy-six thousand, five hundred dollars (\$12,776,500);

WHEREAS in full and final settlement of the claims set forth in the Complaints, Settling Retailer Defendants have paid into escrow the following cash amounts: Musicland has paid [amount]; Tower has paid or will pay [amount]; Trans World has paid [amount];

WHEREAS in full and final settlement of the claims set forth in the Complaints, Distributor Defendants have provided the following Non-Cash Consideration: EMD eight million, five hundred thousand dollars (\$8,500,000) in Non-Cash Consideration; WEA fifteen million, seven hundred fifty thousand dollars (\$15,750,000) in Non-Cash Consideration; Universal twenty one million, seven hundred fifty thousand dollars (\$21,750,000) in Non-Cash Consideration; Sony fourteen million, seven hundred one thousand, five hundred dollars (\$14,701,500) in Non-Cash Consideration; and BMG fourteen million, nine hundred ninety-eight thousand, five hundred dollars (\$14,998,500) in Non-Cash Consideration;

WHEREAS in full and final settlement of the claims set forth in the Complaints, Settling Retailer Defendants and Distributor Defendants have agreed to entry of the injunctive provisions set forth in their respective Settlement Agreements;

WHEREAS the Plaintiff States and Named Class Plaintiffs have each filed amended Complaints as called for in the Distributor Defendant Settlement Agreement;

WHEREAS the Settling Retailer Defendants and Distributor Defendants have agreed to entry of this Preliminary Approval Order;

WHEREAS the parties to these Settlement Agreements have filed them with the Court and requested that the Court grant preliminary approval of the Settlement Agreements pursuant to 15 U.S.C. § 15c and Federal Rule of Civil Procedure 23(e).

WHEREAS the Court has considered the Settlement Agreements, the proposed Notice Plan, and the pleadings and documents submitted in connection with the parties' request for preliminary approval of the Settlement Agreements, and good cause appearing therefor:

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

**I.**

**DEFINITIONS**

As used in this Order, the following definitions shall apply:

1.1. "BMG" means Bertelsmann Music Group, Inc. and BMG Music.

1.2. "Complaints" means the complaints filed in the Litigation by Plaintiffs.

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) and Non-Cash Consideration designated in the Distribution Plan for *cy pres* distribution. This plan will be submitted to the Court with the motion for final approval of the settlement of this Litigation and by the terms of the Settlement Agreements is not part of the Settlement Agreements.

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

1.5. "Distribution Plan" means the plan or method of allocation of the Settlement Fund (after payment of attorneys' fees, costs, and expenses) and the Non-Cash Consideration. This plan was submitted to the Court with the motion for preliminary approval of the settlement of this Litigation and by the terms of the Settlement Agreements is not part of the Settlement Agreements.

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

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

1.8. "Escrow Agent" means Fifth Third Bank of Columbus, Ohio.

1.9. "Final Judgment and Order" means the judgment to be rendered by the Court finally approving the settlement of this Litigation, substantially in the form of Exhibit J to the Settlement Agreements.

1.10. "Lead Counsel for the Plaintiff States" means Florida State Attorney General Robert A. Butterworth, c/o Lizabeth A. 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.

1.11. "Lead Counsel for the Plaintiff Settlement Class" means Joseph C. Kohn and Steven M. Steingard, Kohn, Swift & Graf, P.C., One South Broad Street, Suite 2100, Philadelphia, PA 19107.

1.12. "Litigation" means the actions consolidated for pretrial purposes in this MDL Proceeding, other than *Trowbridge, et al. v. Sony Music Entertainment Inc., et al.*, Docket No. 2:01-CV-125-P-H.

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

1.14. "Music Products" means pre-recorded music CDs, cassettes and/or vinyl albums.

1.15. "Musicland" means Musicland Stores Corp.

1.16. "Named Class Plaintiffs" means the plaintiffs named in the private class action lawsuits consolidated for pretrial purposes in this MDL Proceeding, and not including the



plaintiffs in *Trowbridge, et al. v. Sony Music Entertainment Inc., et al.*, Docket No. 2:01-CV-125-P-H.

1.17. "Non-Cash Consideration" means such value other than the cash deposited into the Settlement Fund that has been or will be provided by Distributor Defendants pursuant to the Distributor Defendant Settlement Agreement.

1.18. "Notice" means the notice to be provided to natural persons in the Plaintiff States and members of the putative Plaintiff Settlement Class pursuant to the Notice Plan. The Notice is included as Appendixes A and B to Plaintiffs' Memorandum in Support of Motion for Preliminary Approval of Settlement Agreements.

1.19. "Notice of Appearance" means the notice required to be filed with the Clerk of the Court evidencing a person's intent to appear at the Settlement Hearing, as specified in Paragraph 5.2 herein.

1.20. "Notice Period" means the \_\_\_\_\_ days during which Lead Counsel for the Plaintiffs will disseminate the Notice to the natural persons in the Plaintiff States and to members of the Plaintiff Settlement Class pursuant to the Notice Plan.

1.21. "Notice Plan" means the plan specifying the manner and content of the program whereby the public is notified of this Settlement Agreement. The Notice Plan is attached as Exhibit A to Appendix C to Plaintiffs' Memorandum in Support of Motion for Preliminary Approval of Settlement Agreements.

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

1.23. "Plaintiff Settlement Class" means all natural persons in the states of Colorado, Georgia, Kentucky, Louisiana, Massachusetts, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey and South Dakota, in the District of Columbia, and in the U.S. Territories of Guam and American Samoa and all non-natural persons or entities in the United States and its Ter-

ritories who purchased Music Products from one or more Retailers during the period from January 1, 1995 to December 22, 2000, but excluding Defendants, their subsidiaries, affiliates, officers, directors, and employees and 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).

1.24. "Plaintiff States" means the States of 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 in their sovereign capacities, on behalf of themselves, and as *parens patriae* on behalf of all natural persons residing in those States who purchased Music Products from one or more Retailers during the period from January 1, 1995 to December 22, 2000, but excluding Defendants, their subsidiaries, affiliates, officers, directors, and employees and excluding 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 who exercise their right to "opt out" of participation in this Litigation).

1.25. "Related Parties," for purposes of all Defendants other than Musicland, means past or present directors, officers, employees, partners, principals, agents, insurers, co-insurers, reinsurers, shareholders, attorneys, accountants, auditors, banks or investment banks, associates, personal or legal representatives, predecessors, successors, parents, subsidiaries, divisions, joint ventures, assigns or affiliated entities of each such Defendant. For purposes of Musicland, "Related Parties" means Best Buy Co., Inc. and Musicland's past or present directors, officers, employees, partners, principals, agents, insurers, co-insurers, reinsurers, controlling shareholders, attorneys, accountants, auditors, banks or investment banks, associates, personal or legal

representatives, predecessors, successors, parents, subsidiaries, divisions, joint ventures, assigns or affiliated entities including without limitation The Musicland Group, Inc., Musicland Retail, Inc., Media Play, Inc., On Cue, Inc., TMG-Virgin Islands, Inc., TMG-Caribbean, Inc., Suncoast Group, Inc., Suncoast Retail, Inc., MLG Internet, Inc., and Suncoast Motion Picture Company, Inc.

1.26. "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 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. 2:01-CV-125P-H.

1.27. "Released Persons" means each and all of the Settling Retailer Defendants and Distributor Defendants and all of their Related Parties, including the labels distributed by Distributor Defendants and each of their respective parents, subsidiaries, divisions, affiliates, stockholders, assignors, assignees, predecessors, successors, officers, directors, employees, agents and attorneys.

1.28. "Request for Exclusion" means the request to be excluded from participation in this Litigation, filed pursuant to Paragraph 4 herein.

1.29. "Retailer" means any rack jobber, third-party distributor or any other person or business entity engaged in the sale, at retail, of Music Products, other than Distributor Defendants and their Related Parties. "Retailer" does not include any Music Clubs, as that term is addressed in *Trowbridge, et al. v. Sony Music Entertainment Inc., et al.*, Docket No. 2:01-CV-125-P-H.

1.30. "Settlement Agreements" means the Settlement Agreement entered into between Plaintiffs and Distributor Defendants, dated \_\_\_\_\_; the Settlement Agreement entered into between Plaintiffs and Tower, dated \_\_\_\_\_; the Settlement Agreement entered into between Plaintiffs and Musicland, dated \_\_\_\_\_; and the Settlement Agreement entered into between Plaintiffs and Trans World, dated \_\_\_\_\_.

1.31. "Settlement Fund" means all monies paid (or, in the case of Tower, to be paid) by the Settling Retailer-Defendants and Distributor Defendants to Plaintiffs, in exchange for the settlement and release of the Released Claims, together with any interest earned on such monies.

1.32. "Settlement Hearing" means the hearing on final settlement approval, more fully described in Paragraph 5 herein.

1.33. "Settlements" means the settlements encompassed by the Settlement Agreements.

1.34. "Settling Retailer Defendants" means Tower, Musicland and Trans World.

1.35. "Sony" means Sony Music Entertainment Inc.

1.36. "Statement" means the written document required to be filed with the Clerk of the Court pursuant to Paragraph 5.2 herein, indicating the basis for opposition to the settlements, the dismissal of claims and/or the entry of final judgment.

1.37. "Tower" means MTS, Inc., dba Tower Records.

1.38. "Trans World" means Trans World Entertainment Corp.

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

1.40. "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.

## II.

### PRELIMINARY APPROVAL OF SETTLEMENTS AND CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS

2.1. This Court has jurisdiction over this action and each of the parties to the Settlement Agreements.

2.2. The terms of the Settlement Agreements are hereby preliminarily approved, subject to further consideration thereof at the Settlement Hearing provided for below. The Court preliminarily finds that the Settlements encompassed by the Settlement Agreements, including the proposed methods of distribution and allocation of the monies and Non-Cash Consideration paid and to be provided in settlement of these actions are fair, reasonable and adequate and in the best interests of natural persons in the Plaintiff States and members of the putative Plaintiff Settlement Class, and their terms satisfy 15 U.S.C. § 15c, applicable principles of state law, Federal Rules of Civil Procedure 23(c)(2) and 23(e), and due process so that Notice of the Settlements should be given as provided in this Order.

2.3. The Court hereby finds that the Plaintiff States consist of the States, Commonwealths and Territories of 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 in their sovereign capacities, on behalf of themselves,

and as *parens patriae* on behalf of all natural persons residing in these States who purchased Music Products from one or more Retailers during the period from January 1, 1995 to December 22, 2000, but excluding Defendants, their subsidiaries, affiliates, officers, directors, and employees and excluding those persons who timely and validly file a Request for Exclusion. The Court finds that the Attorneys General of each of the Plaintiff States have the *parens patriae* authority to represent such natural persons within each of the Plaintiff States and have the authority to settle and release all the Released Claims on behalf of such natural persons, except that in the circumstances of this Litigation such authority as to natural persons in Massachusetts resides in the Attorney General and the Plaintiff Settlement Class together.

2.4. For the purpose of these Settlements only, the Plaintiff Settlement Class, consisting of

all natural persons in the states of Colorado, Georgia, Kentucky, Louisiana, Massachusetts, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey and South Dakota, in the District of Columbia, and in 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 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

is hereby conditionally certified, pending final approval of the Settlements herein.

### III.

#### NOTICE OF SETTLEMENT

3.1. The Court finds that the form and content of the proposed Notice is in full compliance with the requirements of 15 U.S.C. § 15c(b) and Federal Rule of Civil Procedure 23, and satisfies due process. The Court approves the Notice and the Notice Plan.

3.2. The Court finds that the proposed Notice Period is adequate. The Notice Period shall run from \_\_\_\_\_ until \_\_\_\_\_. No later than

\_\_\_\_\_ Lead Counsel for the Plaintiff States and Lead Counsel for the Plaintiff Settlement Class shall cause the Notice to be disseminated to natural persons in the Plaintiff States and members of the putative Plaintiff Settlement Class, in accordance with the Notice Plan and the terms of this Order.

#### IV.

#### REQUESTS FOR EXCLUSION

4.1. All natural persons in the Plaintiff States and members of the putative Plaintiff Settlement Class who submit valid and timely Requests for Exclusion postmarked on or before \_\_\_\_\_ pursuant to instructions contained in the Notice shall not have any rights under the Settlement Agreements and shall not be bound by the Settlement Agreements or the Final Judgment and Order.

4.2. All natural persons in the Plaintiff States and members of the putative Plaintiff Settlement Class who do not submit valid and timely Requests for Exclusion on or before \_\_\_\_\_ pursuant to instructions contained in the Notice shall be bound by the Settlement Agreements and by the Final Judgment and Order.

#### V.

#### THE SETTLEMENT HEARING

5.1. The Settlement Hearing is hereby scheduled to be held before the undersigned on \_\_\_\_\_ at \_\_\_\_ a.m. in Courtroom \_\_\_\_, United States Courthouse, 156 Federal Street, Portland, Maine, to consider: (a) the fairness, reasonableness and adequacy of the Settlements, (b) whether the Distribution Plan and/or Cy Pres Distribution Plan should be approved, (c) certification of the Plaintiff Settlement Class, (d) whether an award of attorneys' fees and expenses should be made to counsel for the Plaintiffs, and (e) the entry of the Final Judgment and Order in this Litigation.



5.2. Any natural person in the Plaintiff States or member of the putative Plaintiff Settlement Class who does not file a valid and timely Request for Exclusion in the manner set forth above may appear at the Settlement Hearing in person or by counsel and may be heard, to the extent allowed by the Court, either in support of or in opposition to the fairness, reasonableness and adequacy of the Settlements and the dismissal with prejudice of these actions as to the Settling Retailer Defendants and Distributor Defendants and the entry of final judgment provided, however, that no person shall be heard in opposition to the Settlements, or dismissal and/or entry of final judgment, and no papers or briefs submitted by or on behalf of any such person shall be accepted or considered by the Court, unless on or before \_\_\_\_\_ such person: (a) files with the Clerk of the Court a notice of such person's intention to appear ("Notice of Appearance"), as well as a statement that indicates the basis for such person's opposition to the Settlements or the dismissal of claims and/or the entry of final judgment ("Statement"), and any documentation in support of such opposition; and (b) serves copies of such Notice of Appearance, Statement and documentation, as well as any other papers or briefs that such person files with the Court, either in person or by mail, upon the Compact Disc Antitrust Litigation Administrator, at Rust Consulting, Inc., 201 S. Lyndale Avenue, Faribault, MN 55021, and upon the following counsel:

Lizabeth Leeds  
Office of the Florida Attorney General  
PL-01, The Capitol  
Tallahassee, FL 32399-1050

William J. Kayatta, Jr.  
Pierce Atwood  
One Monument Square  
Portland, ME 04101

Linda Gargiulo  
Office of the New York Attorney General  
120 Broadway  
New York, NY 10271-0332

Joseph Groff  
Jensen, Baird, Gardner & Henry  
P. O. Box 4510  
Ten Free Street  
Portland, ME 04112-9546

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

5.3. The date and time of the Settlement Hearing shall be set forth in the Notices but shall be subject to adjournment by the Court without further notice other than that which may be posted at the Court and on the Court's web site.

5.4. The parties to the Settlement Agreements shall file with the Court any pleadings or memoranda in support of the Settlement Agreements, including a statement that Lead Counsel for the Plaintiffs have effectuated the Notice Plan, no later than \_\_\_\_\_.

5.5. Any natural person in a Plaintiff State or member of the putative Plaintiff Settlement Class who does not file a valid and timely Request for Exclusion may hire an attorney at his or her own expense to appear in this action. Such attorney shall serve the Notice of Appearance, Statement, and any supporting documentation on the counsel set forth in paragraph 5.2 on or before \_\_\_\_\_ and file them with the Court on or before \_\_\_\_\_.

## VI.

### OTHER PROVISIONS

6.1. The Court finds that the Settlements are entered into in good faith by the parties hereto and that no Released Person shall have a right of contribution or indemnity from any other Released Person.

6.2. In the event that any particular settlement is terminated in accordance with the provisions of one of the Settlement Agreements in this Litigation, that settlement and all proceedings had in connection therewith shall be null and void, except insofar as expressly provided to the contrary in the applicable Settlement Agreement, and such termination shall not affect other settlements and shall be without prejudice to the *status quo ante* rights of the Settling Retailer Defendants, the Distributor Defendants and the Plaintiffs.

6.3. All proceedings in this Litigation against the Settling Retailer Defendants and Distributor Defendants, other than discovery permitted under the Settlement Agreements, are hereby stayed until such time as the Court renders a final decision regarding the approval of the

Settlements and, if it approves the Settlements, enters the Final Judgment and Order as provided in the Settlement Agreements.

6.4. Neither this Order nor the Settlement Agreements shall constitute any evidence or admission of liability by any Settling Retailer Defendant or Distributor Defendant, nor shall they be offered in evidence in this or any other proceeding except to consummate or enforce the Settlement Agreements or the terms of this Order, or by any Settling Retailer Defendant or Distributor Defendant in connection with any action asserting Released Claims.

So Ordered.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

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D. Brock Hornby  
United States Chief District Judge



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. 2:01-CV-125-P-H.

[PROPOSED] TEMPORARY INJUNCTION

WHEREAS the States, Commonwealths or Territories of 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, through their Attorneys General (the "Plaintiff States"), and the Named Class Plaintiffs (on behalf of themselves and each member of the Plaintiff Settlement Class, as defined below), by and through their counsel of record in the Litigation, have filed Complaints for damages, injunctive relief and, in the case of the Plaintiff States, civil penalties against the defendants Capitol Records, Inc. d/b/a EMI Music Distribution, Virgin Records America, Inc., and Priority Records LLC (collectively, "EMD"), 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 (collectively "WEA"), Universal Music & Video Distribution Corporation, Universal Music Group, Inc., and UMG Recordings, Inc. (collectively "Universal"), Bertelsmann Music Group, Inc. and BMG Music (collectively "BMG"), and Sony Music Entertainment Inc.

("Sony") (collectively referred to hereafter as "Distributor Defendants"), alleging violations of applicable federal and state antitrust laws and/or unfair competition and/or consumer protection laws;

WHEREAS the Plaintiff States, through their Attorneys General, and 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, have filed the Complaints referenced in the previous paragraph for damages, injunctive relief and, in the case of the Plaintiff States, civil penalties against the defendants MTS, Inc./Tower Records ("Tower"), Trans World Entertainment Corp. ("Trans World"), and Musicland Stores Corp. ("Musicland"), alleging violations of applicable federal and state antitrust laws and/or unfair competition and/or consumer protection laws;

WHEREAS the Plaintiff States, the Named Class Plaintiffs, and Distributor Defendants desire to resolve any and all disputes arising from the Complaints; the Plaintiff States, Named Class Plaintiffs, and Distributor Defendants executed a settlement agreement on \_\_\_\_\_ (the "Distributor Defendant Settlement Agreement"); and the Distributor Defendant Settlement Agreement does not constitute any evidence against or an admission of liability by the Distributor Defendants;

WHEREAS the Plaintiff States, the Named Class Plaintiffs, and Musicland, Tower and Trans World (hereinafter "Settling Retailer Defendants") desire to resolve any and all disputes arising from the Complaints; the Plaintiff States, Named Class Plaintiffs, and Musicland have executed a settlement agreement on \_\_\_\_\_ (the "Musicland Settlement Agreement"); the Plaintiff States, Named Class Plaintiffs, and Tower have executed a settlement agreement on \_\_\_\_\_ (the "Tower Settlement Agreement"); the Plaintiff States, Named Class Plaintiffs and Trans World have executed a settlement agreement (the "Trans World Settlement Agreement") on \_\_\_\_\_; and the Musicland, Tower and Trans World Settlement Agreements do not constitute any evidence against or an admission of liability by the Settling Retailer Defendants;

WHEREAS in full and final settlement of the claims set forth in the Complaints, Distributor Defendants will pay into escrow on dates established in the Distributor Defendant Set-

tlement Agreement the following cash amounts: EMD will pay a total of six million, five hundred thousand dollars (\$6,500,000); WEA will pay a total of thirteen million, six hundred fifty thousand dollars (\$13,650,000); Universal will pay a total of eighteen million, eight hundred fifty thousand dollars (\$18,850,000); Sony will pay a total of twelve million, five hundred twenty-three thousand, five hundred dollars (\$12,523,500); and BMG will pay a total of twelve million, seven hundred seventy-six thousand, five hundred dollars (\$12,776,500);

WHEREAS in full and final settlement of the claims set forth in the Complaints, Settling Retailer Defendants will pay into escrow the following cash amounts: Musicland will pay [amount]; Tower will pay [amount]; Trans World will pay [amount];

WHEREAS in full and final settlement of the claims set forth in the Complaints, Distributor Defendants will provide the following Non-Cash Consideration: EMD eight million, five hundred thousand dollars (\$8,500,000) in Non-Cash Consideration; WEA fifteen million, seven hundred fifty thousand dollars (\$15,750,000) in Non-Cash Consideration; Universal twenty-one million, seven hundred fifty thousand dollars (\$21,750,000) in Non-Cash Consideration; Sony fourteen million, seven hundred one thousand, five hundred dollars (\$14,701,500) in Non-Cash Consideration; and BMG fourteen million, nine hundred ninety-eight thousand, five hundred dollars (\$14,998,500) in Non-Cash Consideration;

WHEREAS in full and final settlement of the claims set forth in the Complaints, Settling Retailer Defendants and Distributor Defendants have agreed to entry of injunctive provisions that are set forth in the respective Settlement Agreements;

WHEREAS Lead Counsel for the Plaintiffs will file the Settlement Agreements with the Court and will request that the Court grant preliminary approval of the Settlement Agreements pursuant to 15 U.S.C. § 15c and Federal Rule of Civil Procedure 23(e);

WHEREAS the parties to these Settlement Agreements will request that the Court conditionally certify the Plaintiff Settlement Class;



IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

I.

JURISDICTION

This Court has jurisdiction over the subject matter of this action and the parties hereto. The Plaintiffs brought this action asserting claims under Section 1 of the Sherman Act, 15 U.S.C. § 1, and claims under state antitrust and unfair acts, practices or competition laws and common law. Jurisdiction lies in this Court pursuant to 28 U.S.C. §§ 1331, 1337 and 1367(a).

This Court has jurisdiction to enter an injunction in aid of its jurisdiction over the Litigation pursuant to the All Writs Act, 28 U.S.C. § 1651 and the Anti-Injunction Act, 28 U.S.C. § 2283.

II.

DEFINITIONS

As used in this Temporary Injunction, the following definitions shall apply:

- 1.1. "BMG" means Bertelsmann Music Group, Inc. and BMG Music.
- 1.2. "Complaints" means the complaints filed in the Litigation.
- 1.3. "Defendants" means all of the defendants named in the Litigation.
- 1.4. "Distributor Defendants" means EMD, WEA, Universal, Sony and BMG.
- 1.5. "EMD" means Capitol Records, Inc., EMI Music Distribution, Virgin Records America, Inc., Priority Records LLC and all of their predecessors, successors, parents, subsidiaries, divisions, officers, directors, employees or agents, and related or affiliated entities.
- 1.6. "Final Judgment and Order" means the judgment to be rendered by the Court finally approving the settlement of this Litigation, substantially in the form of Exhibit 1 to the Settlement Agreements.

1.7. "Litigation" means the actions consolidated for pretrial purposes in this MDL Proceeding, other than *Trowbridge, et al. v. Sony Music Entertainment Inc., et al.*, Docket No. 2:01-CV-125-P-H.

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

1.9. "Music Products" means pre-recorded music CDs, cassettes and/or vinyl albums.

1.11. "Musicland" means Musicland Stores Corp.

1.12. "Named Class Plaintiffs" means the plaintiffs named in the private class action lawsuits consolidated for pretrial purposes in this MDL Proceeding, but not including the plaintiffs in *Trowbridge, et al. v. Sony Music Entertainment Inc., et al.*, Docket No. 2:01-CV-125-P-H.

1.13. "Non-Cash Consideration" means such value other than the cash deposited into the Settlement Fund that has been or will be provided by Distributor Defendants pursuant to the Distributor Defendant Settlement Agreement.

1.14. "Notice" means the notice to be provided to natural persons in the Plaintiff States and members of the putative Plaintiff Settlement Class pursuant to the Notice Plan.

1.15. "Notice Plan" means the plan specifying the manner and content of the program whereby the public is notified of the Settlement Agreements.

1.16. "Plaintiff Settlement Class" means all natural persons in the states of Colorado, Georgia, Kentucky, Louisiana, Massachusetts, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey and South Dakota, in the District of Columbia, and in 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 from Janu-

ary 1, 1995 to December 22, 2000, but excluding Defendants, their subsidiaries, affiliates, officers, directors, and employees and 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).

1.17. "Plaintiff States" means the States of 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, in their sovereign capacities, on behalf of themselves, and as *parens patriae* on behalf of all natural persons residing in those States who purchased Music Products from one or more Retailers during the period from January 1, 1995 to December 22, 2000, but excluding Defendants, their subsidiaries, affiliates, officers, directors, and employees and excluding 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 who exercise their right to "opt out" of participation in this Litigation).

1.18. "Related Parties," for purposes of all Defendants other than Musicland, means past or present directors, officers, employees, partners, principals, agents, insurers, co-insurers, reinsurers, shareholders, attorneys, accountants, auditors, banks or investment banks, associates, personal or legal representatives, predecessors, successors, parents, subsidiaries, divisions, joint ventures, assigns or affiliated entities of each such Defendant. For purposes of Musicland, "Related Parties" means Best Buy Co., Inc. and Musicland's past or present directors, officers, employees, partners, principals, agents, insurers, co-insurers, reinsurers, controlling shareholders, attorneys, accountants, auditors, banks or investment banks, associates, personal or legal representatives, predecessors, successors, parents, subsidiaries, divisions, joint ventures, assigns or

affiliated entities including without limitation The Musicland Group, Inc., Musicland Retail, Inc., Media Play, Inc., On Cue, Inc., TMG-Virgin Islands, Inc., TMG-Caribbean, Inc., Suncoast Group, Inc., Suncoast Retail, Inc., MLG Internet, Inc., and Suncoast Motion Picture Company, Inc.

1.19. "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 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. 2:01-CV-125-P-H.

1.20. "Released Persons" means each and all of the Settling Retailer Defendants and Distributor Defendants and all of their Related Parties, including the labels distributed by Distributor Defendants and each of their respective parents, subsidiaries, divisions, affiliates, stockholders, assignors, assignees, predecessors, successors, officers, directors, employees, agents and attorneys.

1.21. "Retailer" means any rack jobber, third-party distributor or any other person or business entity engaged in the sale, at retail, of Music Products, other than Distributor Defendants and their Related Parties. "Retailer" does not include any Music Clubs, as that term is

addressed in *Trowbridge, et al. v. Sony Music Entertainment Inc., et al.*, Docket No. 2:01-CV-125-P-H.

1.22. "Settlement Agreements" means the Settlement Agreement entered into between Plaintiffs and Distributor Defendants, dated \_\_\_\_\_; the Settlement Agreement entered into between Plaintiffs and Tower, dated \_\_\_\_\_; the Settlement Agreement entered into between Plaintiffs and Musicland, dated \_\_\_\_\_; and the Settlement Agreement entered into between Plaintiffs and Trans World, dated \_\_\_\_\_.

1.23. "Settlements" means the settlements encompassed by the Settlement Agreements.

1.24. "Settling Retailer Defendants" means Tower, Musicland and Trans World.

1.25. "Sony" means Sony Music Entertainment Inc.

1.26. "Tower" means MTS, Inc., dba Tower Records.

1.27. "Trans World" means Trans World Entertainment Corp.

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

1.29. "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.

## II.

### TEMPORARY INJUNCTION

Effective forthwith, each natural person within the Plaintiff States and each member of the Plaintiff Settlement Class is enjoined from filing, commencing, initiating, asserting, continuing to prosecute, intervening in, participating in or maintaining any other action or proceeding, aside from this Litigation, in any jurisdiction based on, relating to or arising from the subject mat-

ter of the Released Claims, as set forth above in paragraph 1.19 of this Temporary Injunction, until and unless such natural person or such member of the Plaintiff Settlement Class timely and validly excludes himself, herself or itself from participation in this Litigation.

This temporary injunction shall remain in effect until the entry by the Court of a Final Judgment and Order approving the settlement of this Litigation, or until otherwise ordered by this Court.

So Ordered.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

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D. Brock Hornby  
United States Chief District Judge