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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

SONY BMG CD
TECHNOLOGIES LITIGATION

Case No. 1:05-cv-09575-NRB

**AFFIDAVIT OF ELIZABETH C. PRITZKER IN SUPPORT OF
PLAINTIFFS' APPLICATION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

**GIRARD GIBBS
& De BARTOLOMEO LLP**
Jonathan K. Levine (JL-8390)
Daniel C. Girard (Pro Hac Vice)
Elizabeth C. Pritzker (Pro Hac Vice)
Aaron M. Sheanin (Pro Hac Vice)
601 California Street, Suite 1400
San Francisco, California 94108
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KAMBER & ASSOCIATES LLC
Scott A. Kamber (SK-5794)
19 Fulton Street, Suite 400
New York, NY 10038
Telephone: (212) 571-2000

Plaintiffs' Co-Lead Counsel

I, Elizabeth C. Pritzker, being duly sworn, deposes and says that the following facts are true and correct to the best of his personal knowledge:

1. I am a partner of the law firm of Girard Gibbs & De Bartolomeo LLP, Plaintiffs' Co-Lead Counsel in this matter. My office is located at 601 California Street, Suite 1400, San Francisco, California 94108. My telephone number is (415) 981-4800.
2. I am an attorney duly admitted to practice to law before all state and federal courts in the State of California. On or about December 20, 2005, I submitted an affidavit and application for admission to this Court, *pro hac vice*.
3. I make this affidavit in support of Plaintiffs' Application for Preliminary Approval of Class Action Settlement.
4. Submitted herewith and attached hereto as Exhibit A is a true and correct copy of a firm resume for Girard Gibbs & De Bartolomeo, LLP.
5. Submitted herewith and attached hereto as Exhibit B is a true and correct copy of a firm resume for Kamber & Associates, LC.
6. By prior court order, Girard Gibbs & De Bartolomeo, LLP, and Kamber & Associates, LLC, were appointed Plaintiffs' Co-Lead Counsel in this matter.
7. Submitted herewith and attached hereto as Exhibit C is a true and correct copy of the parties' Settlement Agreement, dated December 28, 2005, together with all exhibits that are referenced and expressly incorporated therein, which exhibits are identified as follows:
 - a. A Listing Of All XCP and MediaMax 3.0 and 5.0 CD titles distributed in the United States By Defendant SONY BMG Music Entertainment ("SONY BMG") from August 1, 2003 to the present (Exhibit A to Settlement Agreement);
 - b. A Proposed Final Order and Judgment (Exhibit B to Settlement Agreement);

- c. A Listing of All Album Titles Available For Download By Eligible Settlement Class Members (Exhibit C to Settlement Agreement);
- d. A Proposed Hearing Order (Exhibit D to Settlement Agreement);
- e. A Proposed Summary Notice Of Proposed Class Action Settlement (Exhibit E to Settlement Agreement); and
- f. A Proposed Notice of Proposed Class Action Settlement, Motion For Attorneys' Fees, And Settlement Fairness Hearing (Exhibit F to Settlement Agreement).

I declare under penalty of perjury and the laws of the United States of America that the foregoing is true and correct.

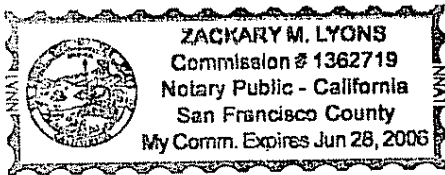
Executed this 28th day of December, 2005 at San Francisco,
California.


Elizabeth C. Pritzker

State of California)
County of San Francisco)

On December 28, 2005, before me, Zackary M. Lyons, Notary Public, personally appeared Elizabeth C. Pritzker, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity on behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



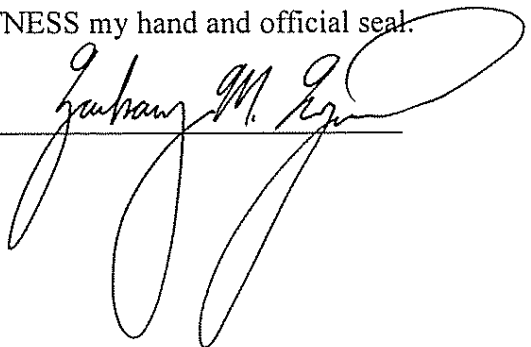

Zackary M. Lyons

Exhibit A to Affidavit of Elizabeth C. Pritzker

GIRARD GIBBS & De BARTOLOMEO

A LIMITED LIABILITY
PARTNERSHIP

Attorneys at Law

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FIRM RESUME

Girard Gibbs & De Bartolomeo LLP specializes in class action and business litigation. Founded in 1995, the firm represents clients throughout the United States in complex securities, antitrust, product liability, and consumer protection actions. The firm has been on the cutting-edge of consumer fraud class actions involving technology issues, having served as co-lead counsel in In re America Online, Inc. Version 5.0 Software Litigation (\$15.5 million settlement of class action alleging violations of the Computer Fraud and Abuse Act), In re PayPal Litigation (aggregate \$14 million settlement plus substantial injunctive relief), and In re iPod Cases (\$60 million settlement).

The firm also specializes in representing and counseling institutional investors in securities and derivative litigation and has represented or advised some of the largest institutional investors in the United States. Girard Gibbs currently is prosecuting securities actions on behalf of the California State Teachers' Retirement System, Allianz of America, Inc., Fireman's Fund Insurance Company, Jefferson Life Insurance Company and Preferred Life Insurance Company. The firm previously has served as outside counsel to the California Public Employees Retirement System (CalPERS), the Kansas Public Employees Retirement System, the State of Wisconsin Investment Board, the Louisiana Teachers' Retirement System, the Louisiana State Employees Retirement System, and the Los Angeles County Employees Retirement Association.

The firm's partners are experienced in all aspects of class action practice and complex securities and business litigation. Girard Gibbs seeks to apply its experience as plaintiffs' attorneys to manage and resolve civil litigation effectively on behalf of all the firm's clients. The firm also provides consulting and preventive counseling services to corporate clients and professionals on a variety of legal issues.

PARTNERS

Daniel C. Girard has served as court-appointed lead counsel, class counsel and liaison counsel in class action proceedings throughout the United States. He has prosecuted over 50 class action matters successfully, including cases in the fields of securities, corporate governance, partnership, antitrust, civil rights, telecommunications, anti-racketeering, unfair competition, false advertising, computer fraud, credit repair, truth-in-lending, and multi-level marketing. Some of the cases in which Mr. Girard served in a leadership role include the Prison Realty Securities Litigation, where as co-lead counsel he obtained one of the largest securities settlements on record (\$134 million), the Digex Litigation, where he was counsel to

the Kansas Public Employees Retirement System, and helped obtain one of the largest class action settlements in Delaware Chancery Court (\$165 million in cash and stock, and non-cash benefits valued at \$450 million), the In re i2 Technologies Securities Litigation, where he was again counsel to the Kansas Public Employees Retirement System and obtained a settlement of \$88 million in cash, and the MCI Non-Subscriber Rates Litigation, where as lead counsel he obtained the largest settlement ever achieved in a telecommunications class action (\$90 million). Mr. Girard also served as the lead attorney for San Francisco's Chinese American schoolchildren in Ho v. San Francisco Unified School District. The Ho litigation settled on the first day of trial when the SFUSD agreed to a comprehensive injunction prohibiting the unlawful use of race and ethnicity in San Francisco public school admissions. The Ho litigation was widely followed, and has been discussed in a number of law review articles.

Mr. Girard currently serves as co-lead counsel in In re SONY BMG Technologies Litigation, a class action alleging that SONY BMG violated the Computer Fraud and Abuse Act by placing digital rights management software on its music CDs. He represents Allianz of America, Inc., Fireman's Fund and other large private institutional investors in litigation against Grant Thornton, Salomon Smith Barney and other defendants arising out of their investments in Winstar Communications, Inc. He represents the California State Teachers Retirement System in litigation against Qwest Communications, Inc. and outside auditor Arthur Andersen. Mr. Girard is co-lead counsel in the In re American Express Financial Advisors Securities Litigation, which has tentatively settled for more than \$100 million. He serves in a leadership capacity in Natural Gas Antitrust Cases I, II, III and IV, antitrust litigation against numerous natural gas companies for manipulating the market for natural gas in California. Mr. Girard also is prosecuting several class actions on behalf of consumers nationwide.

On August 24, 2004, the late Chief Justice Rehnquist appointed Mr. Girard to a three-year term on the Judicial Conference Advisory Committee on Civil Rules, beginning October 1, 2004. Mr. Girard is past Chair of the American Bar Association Business Law Section Subcommittee on Class Actions, Co-Chair of the Business and Corporate Litigation Committee's Task Force on Litigation Reform and Rule Revision, and Vice-Chair of the Business and Corporate Litigation Committee. He is also a member of the National Association of Public Pension Attorneys, the International Corporate Governance Network and the Council of Institutional Investors. Mr. Girard serves as Chairman of the Board of Trustees of the St. Matthew's Episcopal Day School in San Mateo, California and has been a volunteer conservation easement monitor for the Peninsula Open Space Trust since 1991.

Mr. Girard was a partner at Lieff, Cabraser, Heimann & Bernstein LLP from 1988 to 1994. He was an associate with Brobeck, Phleger & Harrison from 1984 to 1987, specializing in securities and corporate law. Mr. Girard is a 1984 graduate of the School of Law, University of California at Davis where he was a member of the Law Review. He received his undergraduate degree from Cornell University in 1979. Mr. Girard is admitted to the California Bar. He also is admitted to practice before the United States Supreme Court, the United States Courts of Appeals for the Fifth and Ninth Circuits and the United States District Courts for the District of Colorado and the Northern, Eastern, Central and Southern Districts of California.

Eric H. Gibbs has served as court-appointed lead counsel, class counsel and liaison counsel in numerous consumer class actions throughout the United States. He has prosecuted over 25 consumer class action matters successfully, including cases involving telecommunications, credit cards, unfair competition, false advertising, truth-in-lending, product liability and credit repair. Some of the cases in which Mr. Gibbs served in a leadership role include In Re Ipod Cases, where as co-lead counsel he obtained a settlement of over \$60 million, Mitchell v. American Fair Credit Association and Mitchell v. Bankfirst, N.A., which generated one of the largest settlements in the United States under the credit services laws (over \$40 million), and Providian Credit Card Cases, which resulted in one of the largest class action recoveries in the United States arising out of consumer credit card litigation (\$105 million).

Mr. Gibbs currently serves as lead counsel in the following matters, among others: In Re America Online Spin-Off Accounts Litigation, MDL No. 04-1581-RSWL, pending in the USDC, Central District of California, Western Division; In re General Motors Corp. DexCool Vehicle Coolant Litigation, MDL No. 1562, pending in the USDC, Southern District of Illinois; In Re Hyundai and Kia Horsepower Litigation, Case No. 02CC00287, Orange County, California; In Re Girls Gone Wild Litigation, Case No. BC296675, Los Angeles County, California; and Sanute v. General Motors Corp., Case No. HG03093843, Alameda County, California.

Mr. Gibbs is a 1995 graduate of the Seattle University School of Law. He received his undergraduate degree from San Francisco State University in 1991. Before joining Girard Gibbs, he worked for two years as a law clerk for the Consumer Protection Division of the Washington Attorney General's Office. Mr. Gibbs has lectured on consumer class action. He is a member of the American Bar Association, the Association of Trial Lawyers of America, the National Association of Consumer Advocates, the Consumer Attorneys of California, and the Alameda County Bar Association. Mr. Gibbs is admitted to the California Bar. He also is admitted to practice before the United States Court of Appeals for the Ninth Circuit, as well as the United States District Courts for the District of Colorado and the Northern, Eastern, Central and Southern Districts of California.

A. J. De Bartolomeo has extensive experience in complex litigation, including the prosecution and defense of class actions arising under the securities, communications, consumer protection and copyright laws. Ms. De Bartolomeo currently serves as co-lead counsel representing the California State Teachers Retirement System in securities litigation against Qwest Communications, Inc., its former officers and directors, and outside auditor Arthur Andersen, involving one of the largest and most pervasive corporate financial frauds in United States history in CalSTRS v. Qwest Communications, et al., pending in California Superior Court for the County of San Francisco. She served as counsel for the State of New Jersey in a securities fraud matter against Gemstar – TV Guide and two of its former officers in State of New Jersey v. Gemstar. She also currently serves as co-lead counsel in the Literary Works in Electronic Databases Litigation, in which the United States District Court for the Southern District of New York recently granted final approval to what is believed to be the largest copyright class action settlement in history (\$18 million). Ms. De Bartolomeo has extensive experience in the negotiation and administration of class action settlements, including the \$90 million settlement in MCI Non-Subscriber Rates Litigation. She has also

worked in the securities industry from 1982-1985, as an assistant trader at Tucker, Anthony & R.L. Day (now known as RBC Dain Rauscher).

Ms. De Bartolomeo is a member of the American Bar Association Sections on Litigation, Business Law and Communications. She also is a member of the National Association of Public Pension Attorneys, where she is an active participant in the Task Force on Securities Litigation and Damage Calculation, as well as a member of the Council of Institutional Investors and the National Association of State Retirement Administrators.

Ms. De Bartolomeo is a 1988 graduate of the University of California, Hastings College of the Law. She received her undergraduate degree from Fairfield University in 1982, and a General Course degree in Economics from the University of London, London School of Economics and Political Science in 1981. Before joining Girard Gibbs, Ms. De Bartolomeo was an associate with Robins Kaplan Miller & Ciresi. She is admitted to the California Bar. She also is admitted to practice before the United States Supreme Court, the United States Courts of Appeals for the First and Ninth Circuits, and the United States District Courts for the District of Michigan, the Southern District of Texas, and the Northern, Eastern, Central and Southern Districts of California.

Elizabeth C. Pritzker has extensive experience in complex litigation matters, including the prosecution of consumer, product liability, and securities class actions. She also represents journalists, print and broadcast media, and not-for-profit organizations in First Amendment-related litigation.

Ms. Pritzker currently serves as co-lead counsel in In re SONY BMG Technologies Litigation, a class action alleging that SONY BMG violated the Computer Fraud and Abuse Act by placing digital rights management software on its music CDs. She also serves as co-lead counsel in securities fraud litigation brought on behalf of the California State Teachers Retirement System against Qwest Communications, Inc., its former officers and directors, and outside auditor Arthur Andersen, CalSTRS v. Qwest Communications et al., San Francisco Superior Court Case No. 415566. She also serves in a leadership capacity in Natural Gas Antitrust Cases I, II, III and IV, antitrust litigation against numerous natural gas companies for manipulating the market for natural gas in California. Ms. Pritzker was co-lead counsel in coordinated consumer class action litigation against Apple Computer, Inc., In Re iPod Cases, which resulted in a settlement of over \$60 million.

In 1992, Ms. Pritzker co-founded the First Amendment Project, a nonprofit, public interest law firm devoted exclusively to First Amendment-related litigation. From 1992 to 1999, she served as the Project's Executive Director and chief staff attorney. Over her seven-year tenure, she successfully litigated matters involving defamation law, copyright and trademark enforcement, licensing, privacy law, Internet law, and enforcement of state and federal right-to-know laws. In 2000, Ms. Pritzker was honored by the Society of Professional Journalists with the prestigious James Madison Freedom of Information Award for her legal work on behalf of journalists and media.

For three years prior to joining Girard Gibbs, Ms. Pritzker was a principal at the law firm of Cotchett, Pitre, Simon & McCarthy, where she specialized in consumer fraud, product liability, securities, construction fraud, and First Amendment-related litigation. Ms. Pritzker

has served as a Lecturer in Mass Communications Law in the Department of Journalism at San Francisco State University. She formerly served as a Supervising Attorney in the Civil Law and Motion Departments of the Alameda County Superior Court, and as a judicial extern to Judge Marilyn Hall Patel of the United States District Court for the Northern District of California. Ms. Pritzker is a frequent speaker on civil litigation matters, including discovery, pre-trial and class action procedures, for the Continuing Education of the Bar, the State Bar of California, and other professional attorney groups. Ms. Pritzker is a 1989 graduate of the University of San Francisco School of Law. She received her undergraduate degree in Economics from McGill University in 1983.

Ms. Pritzker is a member of the Association of Trial Lawyers of America, Trial Lawyers for Public Justice, California Women Lawyers, Consumer Attorneys of California, the Bar Association of San Francisco, the San Mateo Bar Association, and the Alameda County Bar Association. Ms. Pritzker is admitted to the California Bar. She also is admitted to practice before the United States Supreme Court, the United State Court of Appeals for Ninth Circuit, and the United States District Courts for the District of Colorado and the Northern, Central, Southern, and Eastern Districts of California. Ms. Pritzker is a Board Member for the Legal Aid Society of San Mateo County.

Jonathan K. Levine has extensive experience prosecuting complex securities fraud, accounting fraud and class action litigation. He has served and is serving as court-appointed class counsel, lead counsel and liaison counsel in numerous complex class actions in federal courts throughout the United States and in state courts in California. Mr. Levine has prosecuted over 20 securities fraud actions successfully, including cases of complex accounting fraud involving Arthur Andersen, Ernst & Young, KPMG Peat Marwick, Deloitte & Touche, Price Waterhouse and Grant Thornton. Some of the cases in which Mr. Levine served in a leadership role include Rosen v. Macromedia, Inc., where as co-lead counsel he obtained a \$48 million securities class action settlement in California state court, In re Gupta Corporation Securities Litigation, where as co-lead counsel he obtained a \$15 million settlement, Provenz v. Miller, where as co-lead counsel he obtained a \$15 million securities class action settlement, and Providian Credit Card Cases, where as co-lead counsel he obtained a class action settlement of \$105 million, one of the largest class action recoveries in the United States arising out of consumer credit card litigation.

Mr. Levine currently represents Allianz of America, Inc., Fireman's Fund and other large private institutional investors in federal securities litigation against Grant Thornton, Salomon Smith Barney and other defendants arising out of their investments in Winstar Communications, Inc. He is court-appointed co-lead counsel in the In re American Express Financial Advisors Securities Litigation, which has tentatively settled for more than \$100 million, and the AOL Spin-Off Accounts Billing Litigation. He also is serving as lead counsel in Paul v. HCI Direct, Inc. and Griffin v. Fleetwood Enterprises, Inc.

Mr. Levine is the author of "E-Mail and Voice Mail Discovery Issues," Glasser LegalWorks (1998), "Discovery Techniques in Commercial Litigation and Recent Developments In the Rules of Discovery," American Trial Lawyers Association (1991), and the co-author of "The Business Judgment Rule and Derivative Actions," Practicing Law Institute (1989). He has lectured on securities litigation under the Private Securities Litigation Reform Act of 1995, consumer fraud and predatory lending litigation, and computer discovery

and electronic data retention risk control. He is the past chair of the American Bar Association Litigation Section Subcommittee on Officers and Directors Liability. He currently serves as Vice-Chairman of the Piedmont Planning Commission.

For nine years prior to joining Girard Gibbs, Mr. Levine was a partner at the New York law firm of Kaplan Fox & Kilsheimer LLP, where he specialized in securities fraud, accounting fraud and consumer class action litigation. Mr. Levine is a 1988 graduate of Fordham University School of Law. He received his undergraduate degree from Columbia University in 1985. Mr. Levine is a member of the California State Bar Association, New York State Bar Association, Connecticut Bar Association, American Bar Association, the Association of Business Trial Lawyers – Northern California, and the Association of Trial Lawyers of America. He is admitted to the New York, Connecticut and California Bars. He also is admitted to practice before the United States Supreme Court, the United States Courts of Appeals for the Second, Fourth, Ninth and Eleventh Circuits, as well as the United States District Courts for the Southern and Eastern Districts of New York, the Northern District of Texas, and the Northern, Central, Eastern and Southern Districts of California.

ASSOCIATES

Karen L. Hindin is a 1994 graduate of Santa Clara University School of Law, where she was a public interest law scholar. She received her undergraduate degree from the University of California at Los Angeles in 1991. Ms. Hindin specializes in litigating consumer protection class actions and representative suits involving unfair and deceptive business practices in the banking, insurance, telecommunications, automotive, credit card, and various other industries. Prior to joining Girard Gibbs, Ms. Hindin practiced class action law at The Sturdevant Law Firm in San Francisco and Engstrom, Lipscomb & Lack in Los Angeles. Ms. Hindin also served as a research attorney for Judges Aurelio Munoz, Loren Miller, Jr., Judith Chirlen and Florence Marie Cooper. Ms. Hindin is an active member of the Consumer Attorneys of California, serving as an editor of the Forum Magazine, the San Francisco Trial Lawyers Association, serving as Co-Chair of the Women's Caucus, and Trial Lawyers for Public Justice, by whom she was awarded the Public Justice Achievement Award for her work on the case of *Ting v. AT&T*. She is admitted to the California Bar. She also is admitted to practice before the United States Court of Appeals for the Ninth Circuit as well as the United States District Courts for the Northern, Central and Southern Districts of California.

Aaron M. Sheanin is a 1999 graduate of Columbia University School of Law, where he was a James Kent Scholar and a Harlan Fiske Stone Scholar. He received his undergraduate degree from the University of California at Berkeley in 1993, where he was elected to Phi Beta Kappa. Mr. Sheanin focuses on litigating securities fraud and corporate governance cases on behalf of individual and institutional investors. Mr. Sheanin also devotes a significant portion of his time advising several state pension funds with respect to securities matters. He has presented before the American Bar Association's Task Force on Contingent Fees (Tort Trial and Insurance Practice Section). From 1999 to 2001, Mr. Sheanin was a Pro Se law clerk for the United States Court of Appeals for the Second Circuit. Prior to joining Girard Gibbs, Mr. Sheanin was an associate with Lieff, Cabraser, Heimann & Bernstein LLP, where he had extensive experience in prosecuting class action cases involving consumer

protection, product defect and employment discrimination. In the summer of 1997, he was a judicial extern to the Honorable Barrington D. Parker, Jr. of the United States District Court, Southern District of New York. Mr. Sheanin is admitted to the New York, New Jersey and California Bars. He also is admitted to practice before the United States District Courts for the Northern, Central, Eastern and Southern Districts of California.

Rosemary M. Rivas is a 2000 graduate of the University of California, Hastings College of the Law, where she served as Senior Note Editor of the Hastings Constitutional Law Quarterly and was a member of the Hastings Moot Court Board. While at Hastings, Ms. Rivas received the American Jurisprudence Award and the CALI Excellence For The Future Award for her studies in Wills & Trusts. She also assisted in the research and writing of a casebook on Wills & Trusts. Ms. Rivas received her undergraduate degree from San Francisco State University in 1997. Her practice includes litigating consumer class actions and representative cases involving unfair and deceptive business practices in the banking, insurance, internet and retail services industries. She is the Chair of the Consumer Rights Section of the Barristers Club. Ms. Rivas is an active member of the San Francisco Bar Association, the American Bar Association, the Association of Trial Lawyers of America and the Consumer Attorneys of California. Ms. Rivas also participates in the U.C. Hastings Alumni Mentor Program and was a speaker on the U.C. Hastings "Careers In The Law Panel." Ms. Rivas is fluent in Spanish. She is admitted to the California Bar. She also is admitted to practice before the United States Court of Appeals for the Ninth Circuit as well as the United States District Courts for the Northern and Central Districts of California.

Dylan Hughes is a 2000 graduate of the University of California, Hastings College of Law. He received his undergraduate degree from the University of California at Berkeley in 1995. Mr. Hughes was a spring 2000 extern for the Honorable Charles A. Legge of the United States District Court, Northern District of California. Before joining Girard Gibbs, he was a law clerk for the Honorable Paul A. Mapes, Administrative Law Judge of the Office of Administrative Law Judges, United States Department of Labor. Mr. Hughes is a member of the American Bar Association and the Consumer Rights Section of the Barristers Club. He is admitted to the California Bar. He also is admitted to practice before the United States Court of Appeals for the Ninth Circuit as well as the United States District Courts for the Northern and Central Districts of California.

Allison L. Ehlert is a 2003 graduate of the University of California at Berkeley (Boalt Hall School of Law). While at Boalt, Ms. Ehlert was awarded the American Jurisprudence Prize for Criminal Law, the Prosser Prize for Voting Rights and a Moot Court Best Brief commendation. She also served as a Senior Articles Editor on the Berkeley Journal of International Law. Ms. Ehlert received his undergraduate degree, summa cum laude, from Ohio Wesleyan University in 1998, where she was elected to Phi Beta Kappa. She has also studied International Relations at the London School of Economics and Political Science. In the summer of 2001, Ms. Ehlert was a judicial extern to the Honorable Victor A. Marrero of the United States District Court, Southern District of New York. She is admitted to the California Bar. Ms. Ehlert also is admitted to practice before the United States District Courts for Northern and Central Districts of California.

Sheri L. Kelly is a 2003 graduate of the University of California, Hastings College of the Law, where she was Executive Editor of the Hastings Women's Law Journal. Ms. Kelly received her undergraduate degree from the University of California at Berkeley in 1997. In 2002 she served as an extern to the Honorable James R. Lambden of the California Court of Appeal (First District). Before joining Girard Gibbs, Ms. Kelly was an associate with Cotchett, Pitre, Simon & McCarthy from 2003 to 2005, where she prosecuted contract fraud, consumer protection, securities and antitrust cases on behalf of governmental entities, individuals and corporations. Ms. Kelly is a member of the Consumer Attorneys of California, the Association of Trial Lawyers of America, California Women's Lawyers and the American Bar Association. She is admitted to the California Bar. She also is admitted to practice before the United States Court of Appeals for the Ninth Circuit as well as the United States District Court for the Central District of California.

OF COUNSEL

Anthony K. Lee has over ten years of experience in securities and class action litigation. He joined Girard Gibbs as an associate in 1997 and became a partner in 2000. Mr. Lee became of counsel to the firm in 2002. He is a 1991 graduate of Harvard Law School and received his undergraduate degree from Stanford University in 1988. Mr. Lee is admitted to the California Bar. He also is admitted to practice before the United States Courts of Appeal for the Fifth and Ninth Circuits and the United States District Courts for the Northern, Eastern, Central and Southern Districts of California.

CASES

Some of the cases in which the firm has had a leadership role are described below:

<p><u>In re America Online, Inc. Version 5.0 Software Litigation</u> MDL Docket No. 1341 (S.D. Fla.)</p>	<p>Firm served as co-lead counsel in this MDL proceeding which centralized 45 class actions. The action involved alleged violations of the Computer Fraud and Abuse Act, 18 U.S.C. §§ 1030 <u>et seq.</u>, federal antitrust laws and state consumer protection statutes based on AOL's distribution of its Version 5.0 software upgrade. The Honorable Alan S. Gold granted final approval to a \$15.5 million cash settlement on August 1, 2002.</p>
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<p><u>In re LookSmart Litigation</u>, Case No. 02-407778 (San Francisco Super. Ct.)</p>	<p>This nationwide class action suit was brought against LookSmart, Ltd. on behalf of LookSmart's customers who paid an advertised "one time payment" to have their web sites listed in LookSmart's directory, only to be later charged additional payments to continue service. The action involved claims for breach of contract and violation of California's consumer protection laws, among other things. On October 31, 2003, the Honorable Ronald M. Quidachay granted final approval of a nationwide class action settlement providing cash and benefits valued at approximately \$20 million.</p>
<p><u>In re MCI Non-Subscriber Telephone Rates Litigation</u>, MDL Docket No. 1275 (S.D. Ill.)</p>	<p>Class action brought on behalf of all MCI subscribers who were charged MCI's non-subscriber or "casual caller" rates and surcharges instead of the lower rates which MCI advertises and which subscribers expect to be charged. Ten cases were consolidated for pretrial proceedings before the Honorable David R. Herndon, U.S. District Judge for the Southern District of Illinois. Judge Herndon appointed firm as co-lead counsel for the consolidated actions. On March 29, 2001, Judge Herndon granted final approval of a settlement for over \$90 million in cash.</p>
<p><u>Mitchell v. American Fair Credit Association</u>, Case No. 785811-2 (Cal. Super. Ct. Alameda County); <u>Mitchell v. Bankfirst, N.A.</u>, Case No. C-97-1421-MMC (N.D. Cal.)</p>	<p>Class action brought on behalf of California residents who became members of the American Fair Credit Association ("AFCA"). Plaintiffs allege that AFCA operated an illegal credit repair scheme. The Honorable James Richman certified the class and appointed the firm as class counsel on April 12, 1999. In February 2003, Judge Ronald Sabraw of the Alameda County Superior Court and Judge Maxine Chesney of the U.S. District Court for the Northern District of California granted final approval to settlements valued at over \$40 million. See <u>Mitchell et al., v. American Fair Credit Association, Inc., et al.</u>, 99 Cal. App. 4th 1345 (2002) (first reported decision under the California Credit Services Act of 1984).</p>

<p><u>In re: Digex, Inc. Shareholder Litigation</u> <u>Consol. Case No. 18336 (Del. Ch. Ct. 2000)</u></p>	<p>In this lawsuit, minority shareholders of Digex, Inc. sued to enjoin MCI WorldCom's planned acquisition of a controlling interest in Digex through a merger with Intermedia Communications, Inc., the majority shareholder. In a settlement approved by Delaware Chancery Court on April 6, 2000, a fund consisting of \$165 million in MCI WorldCom stock and \$15 million in cash was secured for Digex shareholders, as well as non-cash benefits valued at \$450 million. Girard Gibbs represented the Kansas Public Employees Retirement System, one of two institutional lead plaintiffs.</p>
<p><u>Lund v. AT&T Corp.,</u> <u>Case No. C 98-1500-DDP (AJW)</u> <u>(C.D. Cal.)</u></p>	<p>Class action brought on behalf of small businesses whose long-distance service was switched to Business Discount Plan, Inc. Firm was appointed class counsel by the Honorable Dean D. Pregerson. Settlement providing for full cash refunds and free long-distance telephone service approved in December 1999.</p>
<p><u>Steff v. United Online, Inc.,</u> <u>Case No. BC265953, (Los Angeles Super. Ct.)</u></p>	<p>This nationwide class action suit was brought against NetZero, Inc. and its parent, United Online, Inc., by former NetZero customers. The Plaintiffs alleged that Defendants falsely advertised their internet service as being unlimited and guaranteed for a specific period of time when it was not, in violation of Consumers Legal Remedies Act, Civil Code §§ 17500 <i>et seq.</i> and the Unfair Competition Law, Business And Professions Code §§ 17200 <i>et seq.</i> The Honorable Victoria G. Chaney of the Los Angeles Superior Court granted final approval of a settlement that provides full refunds to customers whose services were cancelled and additional cash compensation. The settlement also places restrictions on Defendants' advertising.</p>
<p><u>Mackouse v. The Good Guys - California, Inc.,</u> Case No. 2002-049656, (Alameda County Super. Ct.)</p>	<p>This nationwide class action suit was brought against The Good Guys and its affiliates alleging violations of the Song-Beverley Warranty Act and other California consumer statutes. The Plaintiff alleged that The Good Guys failed to honor its service contracts, which were offered for sale to customers and designed to protect a customer's purchase after the manufacturer's warranty expired. In May 9, 2003, the Honorable Ronald M. Sabraw granted final approval of a settlement that provides cash refunds or services at the customer's election.</p>

<p><u>Stoddard v. Advanta Corp.</u>, Case No. 97C-08-206-VAB (Del. Superior Ct.)</p>	<p>Class action on behalf of cardholders who were promised a fixed APR for life in connection with balance transfers, whose APR was then raised pursuant to a notice of change in terms. The Honorable Vincent A. Bifferato approved a \$7.25 million settlement and appointed firm as co-lead counsel for the settlement class.</p>
<p><u>In re Oxford Tax Exempt Fund Securities Litigation</u>, Case No. WMN-95-3643 (D. Md.)</p>	<p>Class and derivative litigation brought on behalf of real estate limited partnership with assets of over \$200 million. Settlement providing for exempt issuance of securities under section 3(a)(10) of Securities Act of 1933, public listing of units, and additional settlement benefits valued at over \$10 million approved January 31, 1997. Firm served as co-lead counsel.</p>
<p><u>Ho v. San Francisco Unified School District</u>, Case No. C-94-2418-WHO (N.D. Cal.)</p>	<p>Civil rights action on behalf of certified class of San Francisco public school students of Chinese descent to terminate racial and ethnic quotas imposed under 1983 desegregation consent decree. <u>See Ho v. San Francisco Unified Sch. Dist.</u>, 965 F. Supp. 1316 (N.D. Cal. 1997), <u>aff'd</u> 147 F.3d 854 (9th Cir. 1998); <u>see also</u> 143 Cong. Rec. S6097, 6099 (1997) (statement of United States Senator Hatch referring to testimony of class representative before Senate Judiciary Committee).</p>
<p><u>Mager v. First Bank of Marin</u>, CV-S-00-1524-PMP (D. Nev.)</p>	<p>Nationwide class action brought on behalf of people who were enrolled in First Bank of Marin's credit card program. In May 2002, the Judge Pro of the U.S. District Court for the District of Nevada approved a settlement providing for cash and non-cash benefits to class members.</p>
<p><u>Calliott v. HFS, Inc.</u>, Case No. 3:97-CV-0924-L (N.D. Tex.)</p>	<p>Firm intervened on behalf of institutional client in this securities class action arising out of bankruptcy of Amre, Inc., a seller of home remodeling and repair services. Firm was designated lead plaintiff's counsel under Private Securities Litigation Reform Act. Settlements for \$7.3 million approved August 1999 and December 2000.</p>

<p><u>In re Total Renal Care Securities Litigation</u>, Case No. 99-01750 (C.D. Cal.)</p>	<p>Securities fraud action arising out of restatement of earnings by healthcare provider, brought under the PSLRA by the Louisiana Teachers' Retirement System and the Louisiana School Employees Retirement System. Settled for \$25 million and issuer's commitment to adopt comprehensive corporate governance reforms. Girard Gibbs served as liaison counsel.</p>
<p><u>In re Towers Financial Corporation Noteholders Litigation</u>, MDL No. 994 (S.D.N.Y.)</p>	<p>Securities and RICO class action against promoters and professionals associated with failed investment scheme described by United States Securities and Exchange Commission as "largest Ponzi scheme in U.S. history." \$6 million in partial settlements. \$250 million judgment entered against four senior Towers executives. Firm served as liaison counsel and as a plaintiffs' executive committee member. See <u>Dinsmore v. Squadron, Ellenoff, Plesent, Sheinfeld & Sorkin</u>, 945 F. Supp. 84 (S.D.N.Y.1996), <u>rev'd</u>, No. 97-7011, 1998 U.S. App. LEXIS 1448 (2d Cir. Jan. 28, 1998); <u>In re Towers Financial Corporation Noteholders Litigation</u>, 177 F.R.D. 167 (S.D.N.Y. 1997) ("class counsel--particularly Plaintiffs' Liaison counsel, Daniel Girard--has represented the plaintiffs diligently and ably in the several years that this litigation has been before me").</p>
<p><u>In re World War II Era POW Litigation</u>, Case No. C-99-5042-VRW (N.D. Cal.)</p>	<p>Class action on behalf of American veterans who, as prisoners-of-war held by the Japanese during World War II, were forced to perform slave labor for Japanese industry. Commenting on the Ninth Circuit decision affirming dismissal of the claims, Mr. Girard was quoted in the New York Times, "It's not unusual that you see a demand for payment that isn't legally enforceable. But the demand stands. If the position of the Japanese companies involved is that they refuse to consider the demand for compensation and stand on legal defenses, the moral consequences are what they are."</p>

In re: Prison Realty Securities
Litigation

Case No. 3:99-0452 (M.D. Tenn.)

Girard Gibbs served as co-lead counsel in this securities class action brought on behalf of investors against a real estate investment trust and its officers and directors, following defendants' alleged false statements made in the context of a merger between Corrections Corporation of America and CCA Prison Realty Trust and subsequent operation of the merged entity. On February 13, 2001, the Court granted final approval to a settlement for over \$134 million in cash and stock.

Exhibit B to Affidavit of Elizabeth C. Pritzker

SCOTT A. KAMBER of Kamber & Associates, LLC specializes in technology-related litigation and representing individuals and businesses in complex international matters against foreign sovereigns. Mr. Kamber has an extremely diverse practice before federal and state courts throughout the United States and arbitration panels abroad, with clients ranging from individuals to multinational corporations to classes of consumers and investors.

Experienced in law and business, Mr. Kamber has a proven track record of addressing a client's needs in an individualized manner that is sensitive to budgetary requirements.

Presently, Mr. Kamber serves as co-lead counsel in the *In re Sony BMG CD Technologies* litigation pending in the United States District Court for the Southern District of New York and *In re Network Commerce Securities Litigation* pending in the United States District Court for the Western District of Washington. Mr. Kamber has previously served in a leadership role in numerous private and class actions including suits on behalf of shareholders, consumers and private corporations in the United States and abroad. Mr. Kamber has served as lead counsel and in other leadership roles for numerous class actions that have achieved significant results for the class, including: *Wormley v. GeoCities* (consumer class action for privacy violations that is believed to be the first internet privacy case to recover a benefit for impacted class members); *In re Starlink Growers* (represented sub-class of farmers who grew Starlink in a consolidated settlement of federal class action valued in excess of \$100 million); *In re Loch Harris* (derivative action that successfully obtained dissolution of corporation and distribution of

assets to shareholders); *In re Command Systems* (securities class action in which participating shareholders recovered over 80% of their losses); and *In re WebTV* (consumer class action for false advertising). In addition to these commercial litigations, Mr. Kamber has been involved in the efforts of African torture victims to bring their persecutors to justice under the Alien Tort Claims Act and has achieved significant decisions for his clients before the United States Court of Appeals for the Second Circuit and the Southern District of New York. One such result, *Cabiri v. Ghana*, 165 F.3d 193 (1999), is a leading Second Circuit case under the Foreign Sovereign Immunities Act.

Mr. Kamber graduated *cum laude* from University of California, Hastings College of the Law in 1991 where he was Order of the Coif, Articles Editor for Hastings Constitutional Law Quarterly and a member of the Moot Court Board. Mr. Kamber graduated with University and Departmental Honors from The Johns Hopkins University in 1986. Mr. Kamber has extensive courtroom experience and has tried over 15 cases to verdict. Prior to founding Kamber & Associates, LLC, Mr. Kamber represented both plaintiffs and defendants in a wide range of commercial litigation. Mr. Kamber is admitted to practice in the State of New York as well as the United States Supreme Court, the United States Court of Appeals for the Second Circuit and Eighth Circuit, and the United States District Courts for the Southern and Eastern Districts of New York. In addition, Mr. Kamber is well-versed in the procedures and practice of numerous arbitration forums, both domestic and international. Prior to practicing law, Mr. Kamber was a financial consultant.

Exhibit C to Affidavit of Elizabeth C. Pritzker

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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In re SONY BMG CD Technologies Litigation : No 1:05-cv-09575 (NRB)
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SETTLEMENT AGREEMENT

This Settlement Agreement is made by and among individual and representative Plaintiffs Edwin Bonner, Ori Edelstein, Joseph Halpin, Robert Hull, Andrew Klewan, John Maletta, James Michaelson, Jeffrey Potter, Tom Ricciuti, Yvonne Ricciuti, Dora Rivas, Mary Schumacher and James Springer (“Plaintiffs”), on behalf of themselves and, on the terms set forth herein, the Settlement Class as defined herein, and SONY BMG Music Entertainment (“SONY BMG”), a Delaware general partnership; First 4 Internet Ltd. (“F4I,”), a corporation located in and organized under the laws of the United Kingdom; SunnComm International Inc., a Nevada corporation headquartered in Arizona (SunnComm International Inc. and MediaMax Technology Corp., a Nevada corporation headquartered in Arizona, being collectively referred to herein as “SunnComm”; SunnComm, F4I and SONY BMG being collectively referred to herein as “Defendants”; and Plaintiffs and Defendants being collectively referred to herein as the “Parties), by and through their respective counsel and representatives, as of the 28th day of December 2005, to settle and compromise the claims of Plaintiffs and the Settlement Class on the terms and conditions set forth below:

I. CLAIMS OF THE PARTIES

A. SONY BMG markets and, directly and indirectly, including through retailers, sells, among other things, compact discs (“CDs”) containing music from a wide variety of genres. During the period beginning on August 1, 2003 through the present, some, but not all, of the CD titles marketed and sold by SONY BMG, contained, in addition to tracks of music, software (referred to herein as “Content Protection Software”) that, when the CDs were inserted into computers with CD player/recorder drives, enable consumers to transfer the music to their computers, from which consumers could make specified authorized uses (including transferring the music to portable devices and copying the music on no more than three (3) blank CDs).

B. SONY BMG used two types of Content Protection Software on CDs during the Class Period, “MediaMax” and “XCP.” Two versions of “MediaMax” — MediaMax 3.0 and MediaMax 5.0 — were designed and licensed to SONY BMG by SunnComm. The MediaMax 3.0 and MediaMax 5.0 software included on SONY BMG CDs sold to consumers during the Class Period will be referred to as the “MediaMax Software,” and a SONY BMG CD or copy thereof containing such MediaMax Software will be referred to herein as a “MediaMax CD.” Various versions of “XCP” were designed and licensed to SONY BMG by F4I. The XCP versions included on SONY BMG CDs sold to consumers during the Class Period will be referred to herein as the “XCP Software,” and a SONY BMG CD or copy thereof containing XCP Software will be referred to herein as an “XCP CD.” Lists of the CDs containing MediaMax 3.0, MediaMax 5.0 and XCP are attached as Exhibit A to this Settlement Agreement.

C. Six complaints — *Maletta v. Sony BMG Music Entm't*, No. 05 CV 10637 (UA) (S.D.N.Y. Dec. 19, 2005); *Ricciuti v. Sony BMG Music Entm't*, No. 05 CV 10190 (BSJ) (S.D.N.Y. Dec. 5, 2005); *Klewan v. Arista Holdings Inc. d/b/a Sony BMG Music Entm't*, No. 05 CV 9609, consolidated as No. 05 CV 9575 (NRB) (S.D.N.Y. Nov. 14, 2005); *Michaelson v. Sony BMG Music, Inc.*, No. 05 CV 9575 (NRB) (S.D.N.Y. Nov. 14, 2005); *Potter v. Sony BMG Music Entm't*, No. 05 CV 9607, consolidated as No. 05 CV 9575 (NRB) (S.D.N.Y. Nov. 14, 2005); *Rivas v. Sony BMG Music Entm't*, No. 05 CV 9598, consolidated as No. 05 CV 9575 (NRB) (S.D.N.Y. Nov. 14, 2005) — were filed in the Southern District of New York and are subject to consolidation before the Honorable Naomi Reice Buchwald as the above-referenced *SONY BMG CD Technologies Litigation* (the “Action”). A Consolidated Amended Complaint in the Action (hereafter, the “Complaint”) will be filed before or concurrently with the filing of a motion for preliminary approval of this Settlement Agreement.

D. Additionally, as of the date of this Settlement Agreement, other complaints raising substantially identical claims (collectively, the “Non-S.D.N.Y. Actions”) have been filed in jurisdictions other than the Southern District of New York, including as follows: *Black v. Sony BMG Music Entm't*, No. CIV-05-1315 WDS/RLP (D. N.M. Dec. 19, 2005); *Klemm v. Sony BMG Music Entm't*, No. C 05 5111 BZ (N.D. Cal. Dec. 9, 2005); *Melcon v. Sony BMG Music Entm't*, No. C 05 5084 MHP (N.D. Cal. Dec. 8, 2005); *Ponting v. SONYBMG Music Entm't, LLC*, No. CV-05-08472-JFW(AJWx) (C.D. Cal. Dec. 2, 2005); *Jacoby v. Sony BMG Music Entm't*, No. 05/116679 (N.Y. Sup. Ct. Nov. 30, 2005); *Bahmmaier v. Sony BMG Music Entm't*, No. CJ 2005 06968 (Okla. Dist. Ct. Nov. 28,

2005); *Xanthakos v. Sony BMG Music Entm't, LLC*, No. 05-0009203 (D.C. Super. Ct. Nov. 28, 2005); *Maletta v. Sony BMG Music Entm't Corp.*, No. BC343615 (Cal. Super. Ct. Nov. 28, 2005); *Burke v. Sony BMG Music Entm't*, No. 857213 (Cal. Super. Ct. Nov. 22, 2005); *Hull v. Sony BMG Music Entm't*, No. BC343385 (Cal. Super. Ct. Nov. 21, 2005); *Cooke v. Sony BMG Music Entm't*, No. 05-0009093 (D.C. Super. Ct. Nov. 18, 2005); *DeMarco v. Sony BMG Music*, No. 2:05-cv-05485-WHW-SDW (D.N.J. Nov. 17, 2005); *Stynchula v. Sony Corp. of Am.*, No. BC343100 (Cal. Super. Ct. Nov. 15, 2005); *Gruber v. Sony Corp. of Am.*, No. BC342805 (Cal. Super. Ct. Nov. 9, 2005); *Guevara v. Sony BMG Music Entm't*, No. BC342359 (Cal. Super. Ct. Nov. 1, 2005). Although several of the complaints in the Action and the Non-S.D.N.Y. Actions misidentify the proper corporate entity or the name of the defendant, it is understood that SONY BMG is the defendant meant to have been named in each such complaint.

E. The Complaint and the complaints in the Non-S.D.N.Y. Actions allege that, when and if an XCP CD is inserted into a computer, an End User License Agreement (a "EULA", and, with respect to XCP CDs, the "XCP EULA") appears automatically on the screen and the XCP Software installs itself on the user's computer. The Complaint and the complaints in the Non-S.D.N.Y. Actions assert that the XCP Software contains a potentially harmful "rootkit" which renders the user's computer more vulnerable to "malware" promulgated by third parties, including "viruses," "Trojan Horses" and "spyware," than the computers would have been had the XCP Software not been installed. Plaintiffs also allege that the XCP Software interferes with the user's ability to access the music via non-XCP Software, consumes excess computer resources and causes system

errors. According to Plaintiffs, SONY BMG also uses the XCP Software to collect and store information over the Internet from CD users, including Internet Protocol (“IP”) addresses.

F. The Complaint and the complaints in the Non-S.D.N.Y. Actions also allege that SONY BMG, including through the XCP EULA, misrepresented, or did not fully or adequately disclose, the true nature of the XCP Software, and that the XCP EULA contained terms that are unconscionable or otherwise unenforceable. Plaintiffs further allege that, once installed, the XCP Software is difficult to locate and remove, and that SONY BMG did not make available a ready means to uninstall the XCP Software. Plaintiffs allege that when SONY BMG made an uninstaller program available to remove the XCP Software, this program also created a security risk.

G. The Complaint and the complaints in the Non-S.D.N.Y. Actions further claim that when a MediaMax CD is inserted into a computer, a EULA appears automatically on the screen (for CDs containing MediaMax 3.0, the “MediaMax 3.0 EULA”; for CDs containing MediaMax 5.0, the “MediaMax 5.0 EULA”; each, a “MediaMax EULA”, and collectively, the “MediaMax EULAs”), and that certain software files are immediately loaded onto the computer even before the user of the MediaMax CD has an opportunity to accept or reject a MediaMax EULA. Plaintiffs allege that the MediaMax Software remains on the computer even if the MediaMax EULA is rejected, and further allege that SONY BMG uses the MediaMax Software to collect and store information over the Internet from CD users, including IP addresses.

H. The Complaint and the complaints in the Non-S.D.N.Y. Actions also allege that SONY BMG, including through the MediaMax EULAs, misrepresented, or did not fully or adequately disclose, the true nature of the MediaMax Software, and that the MediaMax EULAs contained terms that are unconscionable or otherwise unenforceable. Plaintiffs also allege that MediaMax 5.0 causes a file folder to be installed on a user's computer that renders the user's computer more vulnerable to security breaches by third parties by allowing these third parties to gain enhanced permissions over the user's computer running the Windows operating system. Plaintiffs further allege that SONY BMG did not make available a ready means to uninstall the MediaMax Software. Plaintiffs allege that when SONY BMG made a program available to uninstall the MediaMax Software, this program also created a security risk.

I. The Complaint and the complaints in the Non-S.D.N.Y. Actions claim that SONY BMG and F4I, by disseminating the XCP Software on XCP CDs, and that SONY BMG and SunnComm, by disseminating the MediaMax Software on MediaMax CDs, violated, among other things, the Computer Fraud and Abuse Act ("CFAA"), 18 U.S.C. §§ 1030, et seq.; the consumer fraud, false advertising, and/or deceptive trade practices laws of the several states, and state and federal common law. The Complaint seeks injunctive relief, equitable relief, restitution, and damages on behalf of a nationwide class of consumers who used any of the MediaMax CDs and/or the XCP CDs. The plaintiffs in the Non-S.D.N.Y. Actions seek essentially the same relief on behalf of a nationwide class or the residents of individual states.

J. Plaintiffs, through their counsel, have conducted an investigation of the facts and analyzed the relevant legal issues. Although Plaintiffs and their counsel believe that the claims asserted in the Complaint have substantial merit, they also have examined the benefits to be obtained under the proposed Settlement, including the prompt removal of XCP CDs from the market, and patches and uninstallers for the MediaMax Software and in the disclosures regarding MediaMax Software, and have considered the risks, costs and delays associated with the continued prosecution of this litigation and the likely appeals of any rulings in favor of either Plaintiffs or Defendants.

K. Defendants have conducted an investigation of the facts and analyzed the relevant legal issues. Defendants deny all liability with respect to any and all facts or claims alleged in the Complaint and the complaints in the Non-S.D.N.Y. Actions, and believe that their defenses, including but not limited to, lack of personal jurisdiction, lack of personal service, and all other defenses available at law or equity to the claims asserted in the Complaint and the complaints in the Non-S.D.N.Y. Actions, have substantial merit. Defendants also have weighed the potential risks, costs and delays associated with continued litigation of the Action against the benefits of the proposed Settlement.

L. Each of the Parties and counsel believes, in consideration of all the circumstances and after substantial arms' length settlement negotiations between counsel, that its interests are best served by entering into the proposed Settlement set forth in this Settlement Agreement, and that this proposed Settlement is fair, reasonable, adequate and in the best interests of the Settlement Class.

M. The Parties also acknowledge that SONY BMG is subject to one lawsuit brought by the Attorney General of the State of Texas (*Texas v. SONY BMG Music Entertainment*, Dist. Ct., Travis Co, Tex.), an inquiry by the Federal Trade Commission, and numerous investigations by state attorneys general and other governmental authorities in various jurisdictions (together, the "Government Inquiries," however, the term "Government Inquiries" expressly excludes actions brought by private citizens of any jurisdiction under a private attorney general statute). The Government Inquiries cover materially the same subject matter as the Complaint and the complaints in the Non-S.D.N.Y. Actions. It is the intention of SONY BMG to seek, to the maximum extent possible, to resolve the Government Inquiries on an agreed basis, with settlement term(s) to be disclosed to Plaintiffs' Class Counsel, the Court and the public. It is the intention of the Parties that the terms of this Settlement Agreement be complementary to the terms of the anticipated settlement(s) of the Government Inquiries, particularly with respect to injunctive relief.

N. The Parties intend that the proposed Settlement embodied in this Settlement Agreement will resolve all Released Claims (as defined below).

NOW, THEREFORE, IT IS HEREBY AGREED by and between the Parties, that:

- (a) the Action be settled and compromised as between Plaintiffs, on behalf of themselves and all Settlement Class Members and the Defendants, subject to approval of the Court after a hearing (or hearings) as provided for in this Settlement Agreement; and

(b) upon Court approval of the settlement and compromise of the Action, a Final Order and Judgment, substantially in the form annexed hereto as Exhibit B (the “Judgment”) be entered: (1) dismissing the Action with prejudice; and (2) barring and enjoining the prosecution by Settlement Class Members of all Released Claims, as defined below, against the Defendants with prejudice.

(c) All of the foregoing shall be subject to the following terms and conditions:

II. DEFINITIONS

In addition to the foregoing defined terms, for purposes of the Settlement Agreement and all Exhibits thereto, the following terms shall have the meanings given to them below:

A. “Class Period” means the period from August 1, 2003 through the Effective Date.

B. The “Effective Date” is the date on which the Judgment becomes Final.

C. “Final” means, when used in connection with any court order or judgment, that the relevant order or judgment will be final:

a) if no appeal is taken therefrom, on the date on which the time to appeal therefrom (including any potential extension of time) has expired; or

b) if any appeal is taken therefrom, on the date on which all appeals therefrom, including petitions for rehearing or reargument, petitions for rehearing *en banc*, and petitions for *certiorari* or any other form of review, have been finally disposed of, such

that the time to appeal therefrom (including any potential extension of time) has expired, in a manner resulting in an affirmance of the relevant order or judgment.

D. The “Injunctive Period” is the period between one day after the Preliminary Approval Date and December 31, 2007.

E. “Security Vulnerability” means a weakness in a system, which may result from bugs or design flaws, allowing an attacker to violate the integrity, confidentiality, access control, availability, consistency or audit mechanism of the system or the data and applications it hosts. For purposes of illustration, Security Vulnerabilities are of significant interest when the program containing the Security Vulnerabilities operates with special privileges, performs authentication, or provides easy access to user data or facilities.

F. “Confirmed Security Vulnerability” means a Security Vulnerability associated with installation or use of Content Protection Software, or an update or patch thereto, that, after the Effective Date, is confirmed by an independent, qualified expert (the “Security Expert”) selected by SONY BMG, such as (without limitation) Next Generation Security Software Ltd. or Cloakware, Inc., to be a Security Vulnerability that poses a significant threat to the security of a system.

G. “Suspected Security Vulnerability” means a replicable Security Vulnerability associated with installation or use of Content Protection Software, other than the XCP Software, XCP Update, XP Uninstaller or an update or patch thereto, that, after the Effective Date, has been found by the SONY BMG personnel responsible for Content

Protection Software, or identified and described to such personnel by a reputable computer security firm, consultant, or other person with expertise in computer security.

H. "Personal Data" means information stored on a computer that itself discloses the identity of the individual using that computer or websites, other than the SONY BMG and SunnComm websites, that the user has visited using the browser on such computer, but does not include the IP address of the computer's Internet connection or any information with respect to an album title, artists and tracks, or other non-personally identifiable information, that is routinely logged by SONY BMG in connection with enhanced or connected CDs.

I. "Plaintiffs' Class Counsel" means the firms of Girard Gibbs & De Bartolomeo LLP and Kamber & Associates, LLC. Plaintiffs' Class Counsel may, at their sole option, delegate certain responsibilities under this Settlement Agreement, including, without limitation, those responsibilities described in Sections III.I-M, III.Q, IV.B(3)(e) and IV.B(4).

J. The "Preliminary Approval Date" is the date one business day after the Court grants preliminary approval to this Settlement Agreement and directs the Defendants to send notice to Settlement Class Members on the terms specified herein.

K. "Released Parties" means each and all of the Defendants and each and all of Defendants' direct and indirect parent companies including, in the case of SONY BMG and without limitation, Sony Corporation and Bertelsmann AG, and each and all of each of Sony Corporation's, Bertelsmann AG's and Defendants' respective divisions and direct and indirect subsidiaries, affiliates, partners, joint ventures, predecessors and successor

corporations and business entities, and each and all of their past and present officers, directors, servants, licensees, joint ventures, sureties, attorneys, agents, consultants, advisors, contractors, employees, controlling or principal shareholders, general or limited partners or partnerships, divisions, insurers, designated management companies, and each and all of their successors or predecessors in interest, assigns, or legal representatives, and any persons or entities that have designed, developed, programmed, manufactured, supplied, advertised, marketed, distributed or sold MediaMax CDs and/or XCP CDs or software thereon.

L. "Settlement Agreement" refers to this Settlement Agreement and "Settlement" refers to the terms of the settlement described herein.

M. "Settlement Class" means the named Plaintiffs in the Action and all natural persons or entities in the United States who purchased, received, came into possession of or otherwise used one or more MediaMax CDs and/or XCP CDs from August 1, 2003 through the Effective Date. SONY BMG shall provide to Plaintiffs' Class Counsel, prior to the Fairness Hearing, an affidavit or other confirmatory discovery verifying that no MediaMax CDs or XCP CDs were sold or issued in the United States prior to August 1, 2003 and the total number of MediaMax CDs and XCP CDs manufactured and sold as of the date of Fairness Hearing. Excluded from the Settlement Class are Released Parties; SONY BMG-authorized resellers or distributors of the XCP CDs and MediaMax CDs; current or former employees of Released Parties; and any persons or entities that have previously executed releases discharging any or all of the Defendants from liability

concerning or encompassing any or all claims that are the subject of the Complaint and the complaints in the Non-S.D.N.Y. Actions.

N. "Settlement Class Member" means any person who falls within the definition of the Settlement Class and who does not validly and timely elect exclusion from the Settlement Class under the conditions and procedures for exclusion as determined by the Court and described in any Notice of Pendency and Settlement of Class Action approved by the Court.

O. "Released Claims" means any and all claims, rights, damages, losses, demands, obligations, actions, causes of action, suits, cross-claims, matters, issues, debts, liens, contracts, liabilities, agreements, costs, or expenses, of any nature whatsoever, ascertained or unascertained, suspected or unsuspected, existing or claimed to exist, including Unknown Claims, of any and all Plaintiffs and/or Settlement Class Members arising out of any purchase or use by them of an XCP CD or a MediaMax CD, the XCP Update (as defined below), the XCP Uninstaller (as defined below), the MediaMax Update (as defined below), or the MediaMax Uninstaller (as defined below) or any installation or de-installation of XCP Software or MediaMax Software at any time, to the extent that such claims: (a) arise out of the Action or the Non-S.D.N.Y. Actions; (b) relate to any allegations that either were or could have been asserted in the Action or the Non-S.D.N.Y. Actions; or (c) which might in the future be asserted by any Plaintiff or Settlement Class Member, against any of the Released Parties that would arise out of, or relate to in any manner, directly or indirectly, any acts, facts, transactions, occurrences, conduct, representations or omissions alleged in the Action and the Non-S.D.N.Y. Actions,

including, without limitation, claims respecting any disclosure, advertising or other descriptions of, or claims relating to (i) the nature, quality, value, and/or functionality of the MediaMax CDs, the XCP CDs, the MediaMax Software, MediaMax Update, MediaMax Uninstaller, XCP Software, XCP Update or XCP Uninstaller; and/or (ii) the EULAs, and/or (iii) the alleged collection by Defendants of Personal Data or IP addresses. Released Claims also include claims for abuse of process, malicious prosecution or any other claim arising out of, relating to, or in connection with the defense or resolution of the Action. For avoidance of doubt, Released Claims include claims relating to (i) the asserted costs of removing XCP Software and/or MediaMax Software from a computer or network and (ii) damages caused by negligent removal of XCP Software and/or MediaMax Software. The sole exception to the definition of Released Claims is that such claims do not include claims for consequential damage to a computer or network that may or are alleged to have resulted from interactions between the XCP Software or the MediaMax Software and other software or hardware installed on such computer or network. (For avoidance of doubt, Released Claims also do not include copyright, trademark or other claims concerning the ownership of intellectual property rights in the MediaMax Software or the XCP Software, or any uninstallers or updates thereto, which were not alleged)

P. "Unknown Claims" means all claims arising out of facts relating to any matter covered by the Released Claims which all persons or entities providing releases under this Settlement Agreement, including all Settlement Class Members, do not know or suspect to exist in their favor at the time of the release of the Released Parties and which, if known by them, might have affected their decision to settle with Defendants and release

the Released Parties or to take any other action including, but not limited to, objecting or not objecting to the Settlement. All persons or entities providing releases under this Settlement Agreement may hereafter discover facts other than or different from those which such persons now know or believe to be true with respect to the subject matter of the Released Claims. Upon the Effective Date, each person or entity providing releases under this Settlement Agreement, including all Settlement Class Members, shall be deemed to have waived any and all rights that he, she, it or they may have under any statute, regulation, administrative adjudication or common law principle that would otherwise limit the effect of the foregoing releases to those claims actually known or suspected to exist at the time of execution of this Settlement Agreement, including, but not limited to, the provisions of Section 1542 of the California Civil Code, to the extent deemed applicable, which provides as follows:

1542. "General Release-Claims Extinguished. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

III. TERMS AND CONDITIONS OF THE SETTLEMENT BENEFITS

A. In exchange for the dismissal of the Action and for entry of the Judgment as provided for in this Settlement Agreement, on the Preliminary Approval Date, SONY BMG shall make available to Settlement Class Members the benefits in this Section III (the "Settlement Benefits"), in accordance with the procedures set forth below.

B. XCP Exchange Program.

1. After some of the complaints had been filed, but before the Parties began negotiating this Settlement Agreement, SONY BMG had offered all persons possessing any XCP CD the opportunity to exchange such XCP CD for an identical CD title that does not contain any Content Protection Software. SONY BMG also has offered any such person the opportunity to download non-content protected MP3 versions of the music contained on any such XCP CD that he or she is exchanging. Those offers are hereby incorporated into this Settlement Agreement as terms of the Settlement and are subject to the terms and conditions of this Settlement Agreement.
2. In addition to the exchange described in Section III.B.1, SONY BMG also shall offer the additional incentives specified below in Section C (the "Incentives") to induce Settlement Class Members to exchange their XCP CDs for CDs that do not contain Content Protection Software.
3. SONY BMG will use commercially reasonable efforts to advise its authorized resellers that SONY BMG will accept returns from that reseller of XCP CDs in any condition, and SONY BMG will provide full refunds to the reseller for those returned XCP CDs. Although SONY BMG cannot compel its resellers to accept such returns from consumers, or dictate the consideration (*i.e.*, refunds, store credit or exchanges) that its resellers will offer upon the return of XCP CDs, SONY BMG will use commercially reasonable efforts to encourage resellers to provide at least an even exchange of that XCP CD, and to provide a receipt for the exchange so that Settlement Class Members may readily claim the Incentives by sending the receipt to SONY BMG.
4. If a Settlement Class Member returns an XCP CD to a reseller, and wishes to claim the Incentives, he or she may do so by filling out a Claim Form, and by sending that Claim Form and the exchange receipt by mail or electronic mail to the address specified on the Claim Form.
5. SONY BMG also will offer Settlement Class Members the option of returning their XCP CDs to SONY BMG by U.S. Mail, or another shipping method, at no charge to the Settlement Class Member. SONY BMG may administer this exchange program itself or it may, at its option, engage a vendor of its choosing to administer the exchange program.
6. If a Settlement Class Member returns an XCP CD to SONY BMG using the procedure specified above in Section III.B(5), that Settlement Class Member may claim the Incentives by completing the Claim Form.

C. Settlement Class Members who exchange XCP CDs purchased before February 1, 2006 shall be entitled, by submitting the Claim Form, to claim either of the following Incentives from SONY BMG:

1. *Incentive #1.* For each XCP CD returned by a Settlement Class Member, the Settlement Class Member may elect to receive a cash payment of seven dollars and fifty cents (\$7.50), payable (at SONY BMG's sole option) by check or debit card, and a promotional code allowing the holder of the code to download the contents of any one (1) of the albums specified on the list attached hereto as Exhibit C.
2. *Incentive #2.* For each XCP CD returned by a Settlement Class Member, the Settlement Class Member may elect to receive a promotional code allowing the holder of the code to download the contents of any three (3) of the albums specified on the list attached hereto as Exhibit C.
3. For both Incentive #1 and Incentive #2, Settlement Class Members will be able to select promotional codes usable to download the specified album contents from any one of three (3) major download services. SONY BMG will use commercially reasonable efforts to ensure that one of the three download services offered as an option to Settlement Class Members is the "iTunes" service. The promotional codes will be fully transferable, and will expire no less than 180 days after they are issued.

D. To claim entitlement to the Incentives, a Settlement Class Member shall (i) return one or more XCP CDs to SONY BMG, or provide SONY BMG with a receipt indicating the return or exchange of an XCP CD at the place of purchase after November 14, 2005; and (ii) complete an on-line or hard-copy Claim Form, which shall include an affirmation that, if the Settlement Class Member has installed the XCP Software, he or she has run the XCP Uninstaller or the XCP Update. If a Settlement Class Member who returns the XCP CD to the place of purchase elects to send the Claim Form by any means other than electronic mail, the Settlement Class Member shall be responsible for the costs of postage for that Claim Form.

E. **MediaMax 3.0 Compensation.** A Settlement Class Member who purchased one or more MediaMax CDs containing MediaMax 3.0 before December 31, 2006, and who provides proof of such purchase under the terms specified below in Section III.H., will be entitled to receive, for each such CD purchased, the opportunity to download non-content protected MP3 versions of the music contained on such MediaMax 3.0 CD.

F. **MediaMax 5.0 Compensation.** A Settlement Class Member who purchased one or more MediaMax CDs containing MediaMax 5.0 before December 31, 2006, and who provides proof of such purchase under the terms specified below in Section III.H., will be entitled to receive, for each such CD purchased, (i) the opportunity to download non-content protected MP3 versions of the music contained on such MediaMax 5.0 CD; and (ii) a transferable promotional code allowing the holder of the code to download, from any one of the three (3) major download services referred to in Section III.C.3, the contents of any one (1) of the albums specified on the list attached hereto as Exhibit C. The promotional code described in clause (ii), above, will expire no less than 180 days after it is issued.

G. The benefits to MediaMax CD purchasers described above in paragraphs III.E. and III.F. shall be referred to collectively herein as the "MediaMax Compensation."

H. To claim entitlement to the MediaMax Compensation, a Settlement Class Member shall complete the on-line or hard-copy Claim Form, which shall include an affirmation that, if the Settlement Class Member installed the MediaMax Software, he or she has run the MediaMax Update or the MediaMax Uninstaller, and submit with the Claim Form one of the following proofs of purchase for each MediaMax CD for which

compensation is sought: (i) the original UPC code, cut out from the cover artwork of the MediaMax CD; (ii) a purchase receipt (including but not limited to an electronic purchase confirmation from any on-line retailer), credit card or bank statement reflecting the purchase, or cancelled check reflecting the purchase, or (iii) the MediaMax CD itself (in which case, SONY BMG will not be required to return the MediaMax CD to the Settlement Class Member). If the Settlement Class Member sends the Claim Form and requisite proof of purchase specified in clause (ii), above, by means other than electronic mail, the Settlement Class Member shall be responsible for the costs of postage or shipment for that Claim Form and proof of purchase. The proof of purchase specified in clauses (i) and (iii), above, must be sent by U.S. Mail or other method of shipment, and the Settlement Class Member shall be responsible for the costs of postage or shipment for the Claim Form and proof of purchase.

I. Plaintiffs' Class Counsel shall have the right to periodically monitor the XCP Exchange Program and ensure that SONY BMG is (itself or through the vendor it selects) providing the appropriate replacement CDs (under Section II.B(1)), Incentives and MediaMax Compensation to Settlement Class Members within a reasonable time after receiving such claims. Additionally, on the later of December 31, 2006 or the Effective Date, SONY BMG will provide to Plaintiffs' Class Counsel information about the total number of Settlement Class Members who (i) downloaded the XCP Update, XCP Uninstaller, MediaMax Update and MediaMax Uninstaller, and (ii) submitted claims for the Incentives and/or MediaMax Compensation. Plaintiffs' Class Counsel shall treat this

information as Confidential under the terms of an appropriate Confidentiality Stipulation to be negotiated prior to the commencement of confirmatory discovery.

J. **XCP Update.** SONY BMG commits to continue making available, through its Internet website, a software utility (the “XCP Update”), downloadable by Settlement Class Members, that will remove the cloaking portion of the XCP Software that hid or “cloaked” filenames, including directories or registry keys with the prefix of \$sys\$, so that the XCP Software’s Content Protection Software is visible to users through an ordinary directory search. Settlement Class Members will not need to provide Defendants with any Personal Data in order to obtain the XCP Update. The XCP Update also will offer Settlement Class Members the opportunity to completely remove the XCP Software from their computer or network. Plaintiffs’ Class Counsel has had and will have an opportunity to review and comment on all instructions provided to Settlement Class Members on how to use the XCP Update. SONY BMG shall verify, subject to confirmatory discovery by Plaintiffs’ Class Counsel, that it has obtained the opinion of an independent, qualified expert that the XCP Update is effective, and that installation of the XCP Update would create no known Security Vulnerabilities that would be considered Confirmed Security Vulnerabilities.

K. **XCP Uninstaller.** SONY BMG commits to continue making available, through its Internet website, a software utility (the “XCP Uninstaller”), downloadable by Settlement Class Members, that will remove the installed XCP Software from the hard disk drive of a Settlement Class Member’s computer. Settlement Class Members will not need to provide Defendants with any Personal Data in order to obtain the XCP Uninstaller.

Plaintiffs' Class Counsel will have an opportunity to review and comment on all instructions provided to Settlement Class Members on how to use the XCP Uninstaller. SONY BMG shall verify, subject to confirmatory discovery by Plaintiffs' Class Counsel, that it has obtained the opinion of an independent, qualified expert that the XCP Uninstaller is effective, and that use of the XCP Uninstaller would create no known Security Vulnerabilities that would be considered Confirmed Security Vulnerabilities.

L. **MediaMax Update.** SONY BMG commits to continue making available, through its Internet website and SunnComm's website, software utilities (collectively, the "MediaMax Update"), downloadable by Settlement Class Members, that eliminate all currently-known Security Vulnerabilities associated with the MediaMax Software that would be Confirmed Security Vulnerabilities post-Effective Date. Settlement Class Members will not need to provide any Personal Data in order to obtain the MediaMax Update. Plaintiffs' Class Counsel will have an opportunity to review and comment on all instructions provided to Settlement Class Members on how to use the MediaMax Update. SONY BMG shall verify, subject to confirmatory discovery by Plaintiffs' Class Counsel, that it has obtained the opinion of an independent, qualified expert that the MediaMax Update is effective, and that installation of the MediaMax Update would create no known Security Vulnerabilities that would be considered Confirmed Security Vulnerabilities.

M. **MediaMax Uninstaller.** SONY BMG commits to continue making available, through its website, a software utility (the "MediaMax Uninstaller") available through SunnComm's website, downloadable by Settlement Class Members, that will remove the MediaMax Software from the hard disk drive of a Settlement Class Member's

computer. Settlement Class Members will not need to provide any Personal Data in order to obtain the MediaMax Uninstaller. Plaintiffs' Class Counsel has had and will have an opportunity to review and comment on all instructions provided to Settlement Class Members on how to use the MediaMax Uninstaller. SONY BMG shall verify, subject to confirmatory discovery by Plaintiffs' Class Counsel, that it has obtained the opinion of an independent, qualified expert that the MediaMax Uninstaller is effective, and that use of the MediaMax Uninstaller would create no known Security Vulnerabilities that would be considered Confirmed Security Vulnerabilities.

N. The XCP Update, the XCP Uninstaller, the MediaMax Update and the MediaMax Uninstaller shall be available continuously on or through SONY BMG's website until December 31, 2007.

O. In the website locations where SONY BMG makes available the XCP Update, the XCP Uninstaller, the MediaMax Update and the MediaMax Uninstaller, SONY BMG also shall provide links to the websites of at least two providers of anti-virus/anti-spyware software, at least one of which companies provides its software at no charge, and will include language encouraging users to visit those websites and learn more about the anti-virus/anti-spyware offerings of such vendors. SONY BMG shall not, by so doing, incur any liability or responsibility for the functionality or performance of such vendors' offerings, and may so state on its website.

P. SONY BMG will begin making the Incentives and the MediaMax Compensation available to Settlement Class Members upon the provision of notice of this Settlement to Settlement Class Members. If the Effective Date does not occur and/or this

Settlement Agreement is terminated pursuant to its terms, Settlement Class Members who have received Settlement Benefits prior to such termination will not have any obligation to return those Settlement Benefits to SONY BMG.

Q. Between the Preliminary Approval Date and the Effective Date, SONY BMG agrees to explore and to discuss with Plaintiffs' Class Counsel other methods for publicizing and disseminating the XCP Update, MediaMax Update, XCP Uninstaller and MediaMax Uninstaller.

R. Defendants agree not to object if any operating system manufacturer, provider of computer security or anti-virus software plans to disseminate the XCP Update, the XCP Uninstaller, the MediaMax Update or the MediaMax Uninstaller, to such provider's customers.

S. **No Collection of Personal Data.** SONY BMG asserts that it has not used the MediaMax or XCP Software, or any of the enhanced content on XCP CDs or MediaMax CDs, to collect, aggregate or retain Personal Data about persons who listened to XCP CDs or MediaMax CDs on computers, without such persons' express consent. SONY BMG further asserts that it only has collected information necessary to provide enhanced CD functionality. SONY BMG believes and, on that basis, asserts that such functionality requires that the album title, artist, IP address, and certain non-personally identifiable information be collected. Beginning prior to the Fairness Hearing, SONY BMG will take commercially reasonable steps to destroy the information it collects to provide enhanced CD functionality, including logs of IP addresses, within ten (10) days after the collection of such data, except as required by law, regulation, litigation discovery

rule or court order. SONY BMG shall, however, be permitted to compile aggregate, non-personally identifiable data about hits to its servers from enhanced CDs.

T. **Third Party Verification.** Between the Preliminary Approval Date and a date to be specified in the Hearing Order, SONY BMG will cause an independent third party to investigate whether SONY BMG has collected, aggregated or retained Personal Data or IP addresses in a manner inconsistent with the above representations. SONY BMG will provide the third party's conclusions to Plaintiffs' Class Counsel and to the Court prior to the Fairness Hearing, and shall post the third party's conclusions on its website. SONY BMG will similarly engage an independent third party to repeat this review once during each of calendar years 2006 and 2007. SONY BMG will post the third party's conclusions on its website no more than thirty (30) days after receiving those conclusions.

U. **Defendants' Waiver of Certain Provisions Of the XCP EULA and the MediaMax EULAs.** As of the Effective Date, Defendants shall waive all of their rights to enforce the following provisions of the XCP EULA and the MediaMax 5.0 EULA (which are identical):

1. **Article 2**, to the extent such provision could be construed as precluding consumers from transferring music they purchased to media players and portable devices that are not "APPROVED MEDIA PLAYERS" and "APPROVED PORTABLE DEVICES" (as those terms are defined in the EULA);
2. **Article 2.3**;
3. **Article 3.1(a)**, to the extent such provision could be construed to prevent copying or reproducing the "DIGITAL CONTENT" otherwise permitted by applicable laws;

4. **Article 3.1(b)**, to the extent such provision could be construed to prevent resale of the physical CD on which the “DIGITAL CONTENT” is embodied;
5. **Article 3.1(e)**, to the extent such provision could be construed as giving Defendants an affirmative right to preclude uninstallation of the XCP Software or MediaMax Software, or other non-negligent efforts to remedy the Security Vulnerabilities allegedly associated with such software;
6. **Article 3.1(f)**, to the extent anything in such provision is inconsistent with SONY BMG’s waiver of rights under this Paragraph U;
7. **Articles 7 and 8;**
8. **Article 9(1);** and
9. **Article 9.2(ii)-(iii).**

As of the Effective Date, SONY BMG and SunComm also shall waive all of their rights to enforce the following provisions of the MediaMax 3.0 EULA:

1. **Paragraph III**, to the extent anything in such provision is inconsistent with SONY BMG’s waiver of rights under this Paragraph U;
2. **Article 1.1**, to the extent such provision could be construed as precluding consumers from transferring music they purchased to a media player or portable device that is not a “Digital Content System” (as that term is defined in the MediaMax 3.0 EULA);
3. **Article 1.2;**
4. **Article 1.3**, to the extent such provision could be construed as (i) preventing copying or reproducing otherwise permitted by applicable laws, (ii) preventing the resale of the physical CD on which the “Digital Content” is embodied, or (iii) giving SONY BMG or SunnComm an affirmative right to preclude uninstallation of the MediaMax software, or other non-negligent efforts to remedy the Security Vulnerabilities allegedly associated with such software; and
5. **Article 1.4**, to the extent such provision could be construed to prevent copying or reproducing otherwise permitted by applicable laws.

As provided in the Proposed Judgment attached hereto as Exhibit B, Defendants agree to waive the limitation of liability provisions (Article 6 of each of the XCP EULA and the MediaMax 5.0 EULA; Article 4.1 of the MediaMax 3.0 EULA), and the New York forum selection clauses (Article 10 of each of the XCP EULA and the MediaMax 5.0 EULA; Article 6.1 of the MediaMax 3.0 EULA) of the EULAs only in cases where a Settlement Class Member alleges non-Released Claims on his or her own behalf only, and not as a putative class action, mass action or private attorney general proceeding.

V. If, after the date on which this Settlement Agreement is executed, SONY BMG enters into any settlement agreement, consent decree, assurance of discontinuance or other, similar pre-trial resolution in connection with any of the Government Inquiries, in which SONY BMG undertakes to provide additional benefits directly to all Settlement Class Members who reside in any single state or states respecting Released Claims, SONY BMG agrees to offer the same benefits to all Settlement Class Members on the same terms. For avoidance of doubt, the payment of civil or criminal penalties, fines or investigative costs by Defendants in connection with any of the Government Inquiries would not constitute the provision of additional benefits directly to Settlement Class Members under this Section.

IV. AGREEMENT WITH ATTORNEYS GENERAL

A. The Parties expect that, by the date of the Fairness Hearing, SONY BMG will have entered into an enforceable, nationwide agreement resolving one or more of the Government Inquiries. The Parties also expect that the resolution of these Government Inquiries will include, at least, the restrictions on SONY BMG's future conduct stated

below in Paragraph IV.B. If, as of the date of the Fairness Hearing, SONY BMG has not entered into such an enforceable agreement, and/or if such agreement is not nationwide in scope and does not address each and every one of the provisions stated in Section IV.B, then as of the date of the Fairness Hearing, this Settlement Agreement will be deemed amended to include an entitlement by Settlement Class Members to an injunction, issued by and enforceable by the Court, implementing each and every such provision not so addressed.

B. The provisions expected to be covered in an agreement to resolve the Government Inquiries, and which will be deemed part of this Settlement Agreement if no enforceable agreement resolving the Government Inquiries is reached prior to the Fairness Hearing, are as follows:

1. SONY BMG will agree not to manufacture or distribute audio CDs with XCP Software. (SONY BMG, in fact, has not been manufacturing or distributing audio CDs with XCP Software since November 2005.)
2. SONY BMG will agree not to manufacture audio CDs with MediaMax 3.0 or MediaMax 5.0. (SONY BMG, in fact, has not been manufacturing audio CDs with MediaMax 3.0 or MediaMax 5.0 since December 18, 2005.)
3. If SONY BMG manufactures any CDs with any Content Protection Software during the Injunctive Period, it will, before doing so:
 - a) Ensure that the Content Protection Software operates in a manner ensuring that no software will be installed on the hard disk drive of a user's computer unless and until the user has agreed to such installation by accepting a EULA or by otherwise affirmatively consenting to such installation.
 - b) Ensure that an uninstaller for such Content Protection Software is made readily available to consumers, without their needing to provide personal information, either on the CD, through a link on the CD's user interface, or by such other comparable method as is generally used in the software industry.

- c) Ensure that the functionality of any updates and/or material changes in functionality of the Content Protection Software is adequately disclosed.
- d) Ensure that any EULA associated with the Content Protection Software accurately describes the nature and function of the software, and does so in easily understandable language.
- e) Show any EULA associated with the Content Protection Software in advance of its use to an independent third party (the “EULA Reviewer”) to be designated jointly by SONY BMG and Plaintiffs’ Class Counsel, and receive comments on the proposed EULA from the EULA Reviewer. SONY BMG shall consider, but will not be required to adopt, the comments of the EULA Reviewer. However, to the extent that SONY BMG determines not to accept the EULA Reviewer’s comments, the EULA Reviewer will not be required to keep such non-accepted comments confidential.
- f) Provide any Content Protection Software to at least one qualified, independent third party, and obtain an opinion from that third party that the installation and use of the software would create no Security Vulnerabilities that would be considered Confirmed Security Vulnerabilities.
- g) Ensure that, with respect to CDs with Content Protection Software, SONY BMG will, if such CDs are played on computers with active connections to the Internet and the CDs cause the computer to make a connection to the Internet, make a record only of the associated album title, artist, IP address from which the connection was made, and certain non-personally identifiable information; provided, however, that the foregoing shall not preclude SONY BMG from obtaining personally-identifiable information from the user upon consent.
- h) Include, on any SONY BMG CD containing any Content Protection Software, a written disclosure, in plain language and type size, and at a location reasonably calculated to provide appropriate pre-sale notice to consumers, that the CD contains such Content Protection Software and a brief description of such Content Protection Software, and, unless such connection is only made upon the user’s prior informed, affirmative consent, that the CD seeks to connect to a SONY BMG (or a contractor’s) server.

4. If, during the Injunctive Period, the SONY BMG personnel responsible for Content Protection Software are made aware of a Suspected Security Vulnerability, either by virtue of their weekly monitoring of a designated email address or other designated means of communication, or otherwise, SONY BMG will take the following steps:
 - a) SONY BMG will ensure that, within no more than five (5) business days after having received such notice, the circumstances of the Suspected Security Vulnerability are communicated to the Security Expert for evaluation and testing.
 - b) If the Security Expert determines that the Suspected Security Vulnerability is a Confirmed Security Vulnerability (which determination will be made as soon as practicable), within five (5) business days after the vulnerability is confirmed SONY BMG will, to the extent practicable and where appropriate, notify at least two major computer security providers (*e.g.*, Symantec and Microsoft) of the Confirmed Security Vulnerability.
 - c) As soon as practicable, and, in any event, within thirty (30) days after the determination that there is a Confirmed Security Vulnerability, SONY BMG will cause to be developed and released (in conjunction with its vendors and with other experts it may elect, in its sole discretion, to retain) an update to the Content Protection Software that corrects the Confirmed Security Vulnerability. The thirty (30)-day period may be extended for good cause if an update is under development, and SONY BMG believes that an update will be able to be released within a reasonable time.
 - d) At the time SONY BMG releases such an update, SONY BMG will, to the extent practicable, notify at least two major computer security providers (*e.g.*, Symantec and Microsoft) of the update. The update shall remain continuously available on or through SONY BMG's website throughout the Injunctive Period.
 - e) At the time SONY BMG releases such an update, SONY BMG also will so notify Plaintiffs' Class Counsel.
 - f) If, after the period specified above in subparagraph (c), SONY BMG determines that it cannot effectively address the Confirmed Security Vulnerability through means of an update, SONY BMG will so notify Plaintiffs' Class Counsel, and will meet and confer with Plaintiffs' Class Counsel on an appropriate course of action. SONY BMG will take such action as it deems appropriate. If Plaintiffs'

Class Counsel does not believe that the actions taken by SONY BMG are appropriate, it may seek relief from the Court, pursuant to the Court's continuing jurisdiction over matters related to this Settlement Agreement.

V. CERTIFICATION OF SETTLEMENT CLASS

A. For settlement purposes only, the Parties will jointly request, as part of the Settlement Notice and Hearing Order, that the Court make preliminary findings and enter an Order granting conditional certification of the Settlement Class subject to final findings and ratification in the Judgment, and appointing Plaintiffs and Plaintiffs' Class Counsel as representatives of the Settlement Class.

B. Defendants do not consent to certification of the Settlement Class for any purpose other than to effectuate the settlement of the Action. If this Settlement Agreement is terminated pursuant to its terms, or if the Effective Date for any reason does not occur, the order certifying the Settlement Class and all preliminary and/or final findings regarding the Court's provisional class certification order shall be automatically vacated upon notice to the Court of the termination of the Settlement Agreement or the failure of the Effective Date to occur, and the Action shall proceed as though the Settlement Class had never been certified and such findings had never been made, without prejudice to the ability of any Party thereafter to request or oppose class certification on any basis.

VI. ENTRY OF SETTLEMENT NOTICE AND HEARING ORDER AND NOTICES TO THE SETTLEMENT CLASS

A. Promptly upon execution of the Settlement Agreement the Plaintiffs in the Action shall apply to the Court for entry of an Order, substantially in the form annexed hereto as Exhibit D:

1. Finding that the requirements for conditional certification of the Settlement Class have been satisfied, appointing the Plaintiffs and Plaintiffs' Class Counsel as representatives of the Settlement Class, and preliminarily approving the Settlement as being within the range of reasonableness such that notice thereof should be given to members of the Settlement Class;
2. Approving the Notice of Pendency and Settlement of Class Action (the "Full Settlement Notice"), substantially in the form of Exhibit E annexed hereto, which will contain instructions for Settlement Class Members to obtain the Settlement Benefits, and a summary form of that Settlement Notice, substantially in the form of Exhibit F annexed hereto (the "Summary Settlement Notice"); and ordering that the Full Settlement Notice and Summary Settlement Notice be disseminated in the manner set forth below and in the Hearing Order;
3. Providing that all members of the Settlement Class who do not, in accordance with the terms of the Settlement Notice, file valid and timely requests for exclusion from the Settlement Class be bound by the Judgment dismissing the Action on the merits and with prejudice;
4. Finding that the form and method of notice to be given in accordance with the terms of this Settlement Agreement and the Hearing Order constitute the best notice practicable under the circumstances and constitute valid, due and sufficient notice to the members of the Settlement Class, satisfying the requirements of the Federal Rules of Civil Procedure, the Constitution of the United States, and any other applicable law;
5. Providing that, pending final determination of whether the Settlement should be approved, neither the Plaintiffs nor any member of the Settlement Class, either directly, representatively or in any other capacity, shall commence or prosecute any action or proceeding in any court or tribunal asserting any of the Released Claims against Defendants or any other of the Released Parties;
6. Scheduling a hearing or hearings (collectively, the "Fairness Hearing") to be held by the Court to consider and determine whether the requirements for certification of the Settlement Class have been met and whether the proposed settlement of the Action in accordance with the terms set forth in this Settlement Agreement, including as part of the Settlement the payment of Plaintiffs' Class Counsel's attorneys' fees and reimbursement of Plaintiffs' Class Counsel's expenses, should be approved as fair, reasonable and adequate, and whether the Judgment approving the Settlement and dismissing the Action on the merits and with prejudice against Plaintiffs and Settlement Class Members should be entered;

7. Providing that the Fairness Hearing may, from time to time and without further notice to the Settlement Class (except those Settlement Class Members who file timely and valid objections), be continued or adjourned by order of the Court;
8. Providing a procedure for members of the Settlement Class to request exclusion from the Settlement Class and to file papers in support of the Settlement with the Court;
9. Establishing December 31, 2006 as the date by which, if a Settlement Class Member has not sought to receive one or more of the Settlement Benefits available under this Settlement Agreement, that Settlement Class Member shall forever be barred from participating or receiving the Settlement Benefits set forth herein, but shall in all other respects be subject to the provisions of this Settlement Agreement, the releases contained in Section VIII, and the Judgment;
10. Providing that any objections by any Settlement Class Member to: (i) the certification of the Settlement Class and the proposed Settlement, as described in the Full Settlement Notice, including the provision for payment of Plaintiffs' counsel's attorneys' fees and reimbursement of expenses, and/or (ii) entry of the Judgment, shall be heard and any papers submitted in support of said objections shall be considered by the Court at the Fairness Hearing only if, on or before a date (or dates) to be specified in the Hearing Order, such objector files with the Court a notice of the objector's intention to appear, submits documentary proof that the objector is a Settlement Class Member, states in writing the basis for such objections, and serves copies of the foregoing and all other papers in support of such objections upon counsel for the Parties identified in the Full Settlement Notice so that such papers are actually received by the date set by the Court;
11. Requiring notice to be provided to the authorities that are required to be notified of prospective class action settlements under the Class Action Fairness Act of 2005, as set forth in Section X.D; and
12. Establishing a date (or dates) by which the Parties shall file and serve all papers in support of the application for final approval of the Settlement, including the provision for payment of Plaintiffs' counsel's attorneys' fees and reimbursement of expenses, and/or in response to any valid and timely objections received by the designated counsel for the Parties identified in the Full Settlement Notice.

B. The Settlement Class shall be given notice of the proposed Settlement (collectively, the "Notice") as set forth below, subject to the approval of the Court:

1. SONY BMG shall cause the Full Settlement Notice to be sent by electronic mail, on or before a date to be set forth in the Hearing Order, to all Settlement Class Members whose email addresses SONY BMG possesses.
2. SONY BMG shall post the Full Settlement Notice on its website. The Full Settlement Notice will remain posted on that website until December 31, 2006 or until this Settlement Agreement is terminated by its terms.
3. When a user inserts certain XCP CDs and MediaMax CDs into a computer with an active connection to the Internet, the computer queries SONY BMG's website and SunnComm's website (for XCP CDs and MediaMax CDs, respectively) for content, hereafter referred to as the "Banner," specific to the artist whose work appears on the XCP CD or MediaMax CD. SONY BMG will ensure that, on or before a date to be set forth in the Hearing Order, the Banner on MediaMax CDs and XCP CDs so equipped will, in addition to its regular artist-specific content, display a clear and conspicuous link to the Full Settlement Notice.
4. SONY BMG shall work with (and, if necessary, compensate) Google and other search engine firms to ensure that a link to the Full Settlement Notice is displayed prominently when users of those search engines search for words such as "XCP," "MediaMax" and "SONY BMG Settlement."
5. SONY BMG shall cause the Summary Settlement Notice to be published, on or before a date to be set forth in the Hearing Order in (i) the *USA Today* newspaper, or another, similar publication of national circulation; (ii) *People* magazine, or another, similar publication of national circulation; (iii) *Rolling Stone* and *Spin* magazines; (iv) the *Los Angeles Times*, (v) the *New York Daily News*; (vi) the *New York Post*, (vii) the *Chicago Tribune* and (viii) the *Atlanta Journal-Constitution*. With respect to the daily publications listed above, the advertisements containing the Summary Settlement Notice shall be published on any single Monday, Tuesday, Wednesday or Thursday, and shall not be required to be more than an eighth-page in size.
6. Plaintiffs' Class Counsel may continuously post the Summary Settlement Notice and the Full Settlement Notice on their firm websites, beginning two (2) business days prior to the date set forth in the Hearing Order for transmission of the Full Settlement Notice and publication of the Summary Settlement Notice, and ending on December 31, 2006. Plaintiffs' Class

Counsel will, additionally, cause the joint press release described below in Section XI.F, which will contain the information included in the Summary Settlement Notice, to be issued over PR Newswire, or another similar national business wire service, on any one date on or after the date two (2) business days prior to the date set forth in the Hearing Order for transmission of the Full Settlement Notice and publication of the Summary Settlement Notice.

C. The Parties agree that if, for any reason, the Notice is not or cannot be first provided before February 1, 2006, the Parties will confer in good faith and recommend to the Court that the date by which any Settlement Class Member must seek to receive one or more of the Settlement Benefits (specified above in Section VI.A(9)) be extended correspondingly.

D. The Parties also agree that, if the Settlement Benefits available to Settlement Class Members change, including by operation of Section III.V. or IV.A, no new notice need issue to Settlement Class Members.

VII. THE JUDGMENT

If, at or after the Fairness Hearing, the Settlement Agreement is approved by the Court, Plaintiffs shall promptly submit to the Court the Judgment:

1. Ratifying the certification of the Settlement Class and approving the Settlement, judging its terms to be fair, reasonable, adequate and in the best interests of the Settlement Class Members, directing its consummation in accordance with its terms, and reserving continuing jurisdiction to implement, enforce, administer, effectuate, interpret, monitor and ensure compliance with the provisions of this Settlement Agreement and the Judgment;
2. Dismissing the Action on the merits, with prejudice and without costs (except as otherwise provided herein), and releasing the Released Claims;
3. Permanently barring and enjoining Plaintiffs and Settlement Class Members from asserting, commencing, prosecuting, maintaining, or continuing (as members of a class action or otherwise) any of the Released Claims;

4. Providing for Defendants' waivers of the limitation of liability provisions (Article 6 of each of the XCP EULA and the MediaMax 5.0 EULA; Article 4.1 of the MediaMax 3.0 EULA), and the New York forum selection clauses (Article 10 of each of the XCP EULA and the MediaMax 5.0 EULA; Article 6.1 of the MediaMax 3.0 EULA) of the EULAs, only to the extent that a person pursues non-Released Claims against Defendants on an individual, as opposed to class action or mass action, basis; and
5. Containing findings based on the record and confirmatory discovery obtained by Plaintiffs' Class Counsel that the scope of the class and the releases are appropriate in light of concerns that non-Released Claims for consequential damages to a computer or network, as provided in Section II.O, may raise questions concerning the predominance and manageability requirements under Federal Rule of Civil Procedure 23(b)(3).

VIII. RELEASES

A. In accordance with the provisions of the Judgment, for good and sufficient consideration, the receipt of which is hereby acknowledged, on the Effective Date, each Plaintiff and each Settlement Class Member shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished and discharged each and all of the Released Claims against each and all of the Released Parties, in the manner(s) set forth above.

B. In accordance with the provisions of the Judgment, for good and sufficient consideration, the receipt of which is hereby acknowledged, on the Effective Date, the Defendants shall be deemed to have, and by operation of the Judgment shall have, fully, finally and forever released, relinquished and discharged all of the Plaintiffs, Plaintiffs' Class Counsel and all agents of and expert witnesses retained by Plaintiffs' Class Counsel from any claims (including Unknown Claims) for abuse of process, malicious prosecution or any other claim arising out of, relating to, or in connection with the institution, prosecution, assertion or resolution of the Action.

IX. ATTORNEYS' FEES, COSTS AND INCENTIVE PAYMENTS TO NAMED PLAINTIFFS

A. As of the date this Settlement Agreement was executed, the Parties have not substantially discussed either the amount of attorneys' fees or costs that Plaintiffs' counsel may ask the Court to award to them. It is, however, the understanding of the Parties that Plaintiffs' counsel will apply for an award of attorneys' fees and reimbursable expenses in accordance with legal principles, that any fees and costs applied for and ultimately awarded by the Court will be paid by Defendants, and that Defendants' payment of Plaintiffs' attorneys' fees and reimbursable expenses will not affect the Settlement Benefits provided to Settlement Class Members in any way.

B. The Parties will seek to reach agreement on the amount of attorneys' fees and reimbursable expenses to be applied for. If the Parties reach agreement on the subject of fees and/or costs to be awarded to Plaintiffs' counsel prior to the sending of notice to Settlement Class Members, the Full Settlement Notice will reflect that agreement.

C. Plaintiffs' Class Counsel will request that the Court award an incentive payment, not to exceed \$1,000, to each of the Plaintiffs in the Action and the named plaintiffs in the Non-S.D.N.Y. Actions. Defendants shall not oppose any such requests, and will pay \$1,000 or such lesser amounts as the Court may direct to each of the specified individuals within ten (10) business days after the Effective Date.

X. COSTS OF NOTICE AND ADMINISTRATION

A. SONY BMG agrees to disseminate the Full Settlement Notice and publish the Summary Settlement Notice, and to pay all costs of doing so, in accordance with the terms of this Settlement Agreement. In the event this Settlement Agreement does not

become final or the Effective Date does not occur for any reason, other than a breach by Plaintiffs or Plaintiffs' Class Counsel of one or more provisions of this Settlement Agreement, Plaintiffs shall have no obligation to reimburse Defendants for any costs or expenses paid, incurred or obligated for notice of this Settlement to the Settlement Class.

B. SONY BMG agrees to be responsible for paying all costs incurred in connection with providing the Settlement Benefits and otherwise complying with the procedures set forth in the Judgment and this Settlement Agreement. All procedures followed to provide the Notice to the Settlement Class shall be subject to approval by Plaintiffs' Class Counsel and subject to review for completeness and compliance with the Hearing Order by Plaintiffs' Class Counsel.

C. Plaintiffs' Class Counsel will have the right to monitor the fulfillment and payment of Settlement Benefits to Settlement Class Members and, pursuant to the terms and conditions included in this Settlement Agreement, may act on behalf of Settlement Class Members to assist in their receipt of the Settlement Benefits. SONY BMG shall cooperate in such effort consistent with the provisions of this Settlement Agreement.

D. SONY BMG shall have the responsibility to prepare and provide the notices required by the Class Action Fairness Act of 2005, Pub. L. 109-2 (2005), including, but not limited to, the notices to the United States Department of Justice and to the Attorneys General of all states in which Settlement Class Members reside, as specified in 28 U.S.C. § 1715. Plaintiffs' Class Counsel shall cooperate in the drafting of such notices and shall provide Defendants with any and all information in its possession necessary for the preparation of these notices.

XI. OTHER PROVISIONS

A. Upon execution of this Settlement Agreement, the Parties agree to cooperate and use all reasonable efforts to achieve approval of the Settlement in accordance with the terms of this Settlement Agreement, and to implement the Settlement and comply with, confirm the bases for and effectuate the terms of this Settlement Agreement.

B. Plaintiffs' Class Counsel shall, upon execution of an appropriate confidentiality agreement, be entitled to appropriate confirmatory discovery from SONY BMG, F4I and SunnComm, as specified in this Settlement Agreement or as may be agreed between the Parties. Such confirmatory discovery shall occur between the Preliminary Approval Date and the Fairness Hearing. Any confidential documents given to Plaintiffs' Class Counsel during confirmatory discovery shall be returned to Defendants prior to the Fairness Hearing, or immediately upon termination of this Settlement Agreement pursuant to its terms. Plaintiffs' Class Counsel's return of such documents shall be without prejudice to its ability to demand document production through party discovery if the Effective Date does not occur and/or this Settlement Agreement is terminated pursuant to its terms.

C. Whether the Effective Date does or does not occur, this Settlement Agreement, all negotiations and papers related to it, and any proceedings in connection with the Settlement: (1) are not and shall not be construed as evidence of an admission or concession of wrongdoing or liability by Defendants or any other Released Party as to any claim or allegation asserted in the Action and the Non-S.D.N.Y. Actions; and (2) are not

and shall not be construed as evidence or an admission or concession by Plaintiffs that claims or allegations asserted in the Action and the Non-S.D.N.Y. Actions against Defendants or any other Released Party lack merit.

D. Plaintiffs and Defendants agree that the terms of this Settlement Agreement were not based solely on the amount of consideration to be paid, but were based on (1) vigorous arm's-length negotiations between counsel for the Parties; (2) the assessment of the signatories to this Settlement Agreement of the strengths and weaknesses of the various claims asserted in the Action and the Non-S.D.N.Y. Actions against Defendants, based on the various claims asserted or which could be asserted; and (3) the expense and risks of ongoing litigation. Moreover, the amount of damages that Plaintiffs could prove is a matter of serious and genuine dispute, and the terms of the Settlement do not constitute a finding, admission or concession with respect to the measure of damages that could be proved at trial. The Parties further acknowledge that no determination has been made by the Court as to the amount, if any, of damages suffered by Settlement Class Members or of the proper measure of any such damages, and that the determination of damages, like the determination of liability, is a complicated and uncertain process, typically involving conflicting expert opinions.

E. At all times during the course of this litigation, Defendants have denied and continue to deny any liability to Plaintiffs and Settlement Class Members, and have denied and continue to deny that Plaintiffs or any Settlement Class Members were damaged by any alleged wrongful conduct, or that, even if damaged, any compensable damages could be measured or recovered.

F. In order to ensure that all information provided to the Settlement Class Members regarding the terms and conditions of this Settlement is neutral in terms of content and consistent with what has been submitted for approval of, or has been approved by, the Court, Defendants and Plaintiffs' Class Counsel agree jointly to draft a press release, subject to the approval of both Defendants and Plaintiffs' Class Counsel, that describes this Settlement Agreement (including Defendants' denial of liability and Plaintiffs' assertion that their claims were meritorious) and includes substantially all the information contained in the Summary Settlement Notice. The signatories to this Settlement Agreement agree that they shall not issue or cause others to issue any statements for publication or otherwise disseminate statements regarding the terms and conditions of the Settlement that are inconsistent with those included in this Settlement Agreement and/or the joint press release. Notwithstanding the foregoing agreement, Defendants retain their right to deny liability.

G. Within five (5) business days after the deadline established by the Court in the Hearing Order for members of the Settlement Class to request exclusion from the Settlement Class, Plaintiffs' Class Counsel shall furnish to Defendants' counsel a complete list of all timely and valid requests for exclusion they have received (the "Opt-Out List").

H. Defendants shall have the option to withdraw from this Settlement Agreement if the number of timely and valid requests for exclusion exceeds one thousand. Defendants shall have thirty (30) days from their receipt of the Opt-Out List in which to exercise their right of withdrawal pursuant to this paragraph. Withdrawal shall be accomplished by filing with the Court a notice of withdrawal (the "Withdrawal Notice"),

which notice shall, if Defendants withdraw pursuant to this Section XI.H, be served on Plaintiffs' Class Counsel.

I. This Settlement Agreement is conditioned upon the Judgment in the Action becoming Final. If the Judgment is reversed or vacated, or if the Effective Date does not occur for any other reason, the Defendants, and each of them, shall have the right to terminate this Settlement Agreement with respect to such Defendant(s). If the Judgment is modified in any manner that limits the scope of releases given to the Released Parties as provided in Section VIII of this Settlement Agreement, or does not include the findings identified above in Section VII(5), or if the Hearing Order imposes obligations on Defendants substantially different from those stated above in Section V, each of Plaintiffs and Defendants shall separately have the right either to affirm this Settlement Agreement as modified, or to terminate this Settlement Agreement by filing and serving a Withdrawal Notice on all the other non-withdrawing Parties.

J. The signatories to this Settlement Agreement agree to assist Defendants in seeking and obtaining the dismissal of all other actions, including the Non-S.D.N.Y. Actions, alleging Released Claims.

K. If the Effective Date does not occur or this Settlement Agreement is otherwise terminated in accordance with its provisions, the Parties shall be restored to their respective positions as of December 22, 2005, except that any extensions of time granted since that date by one Party to the other shall continue to have force and effect, and neither Party shall seek an order of default against any other Party for actions not taken while approval of the Settlement was pending. The terms and provisions of the Settlement

Agreement shall at that time have no further force and effect with respect to the Parties and, to the extent permitted by law, shall not be used in any action or proceeding for any purpose. Any Judgment entered in accordance with the terms of the Settlement Agreement shall be treated as vacated, nunc pro tunc.

L. SunnComm and/or F4I may withdraw from this Settlement Agreement at any time before January 15, 2006 or the date Notice is first disseminated, whichever is earlier, by filing and serving a Withdrawal Notice to Plaintiffs' Class Counsel. If either SunnComm and/or F4I so timely withdraws from this Settlement Agreement, the remaining Parties shall request that the Court enter a Judgment that excludes the withdrawing Defendant (and of each of its divisions and direct and indirect subsidiaries, affiliates, partners, joint ventures, predecessors and successor corporations and business entities, and each and all of its past and present officers, directors, servants, licensees, joint ventures, sureties, attorneys, agents, consultants, advisors, contractors, employees, controlling or principal shareholders, general or limited partners or partnerships, divisions, insurers, designated management companies, and each and all of its successors or predecessors in interest, assigns, or legal representatives, all of which collectively and, with such withdrawing Defendant, the "Withdrawing Defendant Parties") from the definition of "Released Parties," the Withdrawing Defendant Parties shall be restored to their position as of December 22, 2005, and Plaintiffs shall be restored to their position in respect of the Withdrawing Defendant Parties as of December 22, 2005.

M. The Parties agree that, to the fullest extent permitted by law, neither the Settlement Agreement nor the fact of the Settlement, nor any act performed nor document

executed pursuant to or in furtherance of the Settlement Agreement or the Settlement, is or may be deemed to be or may be used as an admission of, or evidence of: (1) the validity of any claim of any Settlement Class Member, or (2) any wrongdoing, fault, omission, or liability of the Defendants in any proceeding in any court, administrative agency or other tribunal. Nothing in this Section XI.M shall preclude any Party from using the Settlement Agreement, the Judgment, or any act performed or document executed pursuant thereto in a proceeding to consummate, monitor or enforce the Settlement Agreement, the terms of the Settlement or the Judgment.

N. All of the Exhibits to this Settlement Agreement are material and integral parts hereof.

O. The undersigned signatories represent that they are fully authorized to execute and enter into the terms and conditions of this Settlement Agreement on behalf of the respective persons or entities for whom they have signed this Settlement Agreement.

P. This Settlement Agreement contains the entire agreement among the Parties hereto and supersedes any prior agreements or understandings between them. All terms of this Settlement Agreement are contractual and not mere recitals and shall be construed as if drafted by all Parties. All provisions of this Settlement Agreement are and shall be binding upon each of the Parties hereto, their agents, attorneys, employees, successors and assigns, and upon all other persons claiming any interest in the subject matter hereto through any of the Parties hereto, including Plaintiffs and any Settlement Class Member who does not validly opt out of membership in the Settlement Class.

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

R. 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. Counsel for the Parties to the Settlement Agreement shall exchange among themselves copies of the original signed counterparts, and a complete set of original signed counterparts shall be filed with the Court.

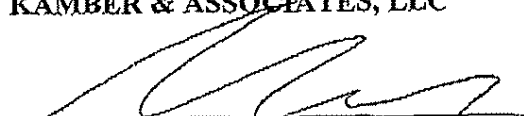
S. The Parties agree that the Court shall have exclusive and continuing jurisdiction over the Parties for all purposes relating to the implementation, effectuation, interpretation, administration, monitoring and enforcement of this Settlement Agreement and all provisions thereof with respect to all Parties hereto and all beneficiaries hereof, including all Plaintiffs, Plaintiffs' Class Counsel, Defendants, Settlement Class Members and Released Parties. Except as provided solely in this Section XI.S, F4I does not admit that it has been personally served as required by law, or that this or any court in the United States has jurisdiction over it, and that by subjecting itself to the jurisdiction of this Court for purposes of this Settlement Agreement, it does not accept or subject itself to jurisdiction for any other action or matter. The Parties agree that the Court also shall retain continuing jurisdiction to determine whether, in the event an appeal is taken from any aspect of the Judgment approving the Settlement or any award of attorneys' fees and/or costs, notice should be given at the appellant's expense to some or all Settlement Class Members apprising them of the pendency of the appeal and such other matters as the Court may order. Any and all disputes, requests or petitions regarding or arising out of the

enforcement, construction, administration or interpretation of the Settlement Agreement, any provisions of the Settlement Agreement or the Judgment, must be made, if at all, to this Court by motion to the Court.

T. The terms and conditions of this Settlement Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of New York, without regard to any applicable choice of law or conflicts rules.

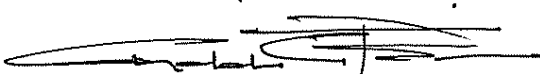
DATED: December 28, 2005

KAMBER & ASSOCIATES, LLC



Scott A. Kamber, Esq. (SK-5794)
19 Fulton Street, Suite 400
New York, New York 10038
(212) 571-2000

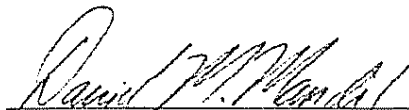
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*Plaintiffs' Co-Lead Counsel and Interim
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SONY BMG MUSIC ENTERTAINMENT



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Defendant

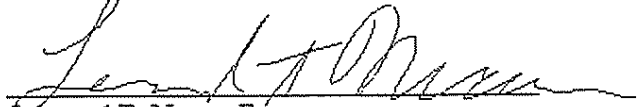
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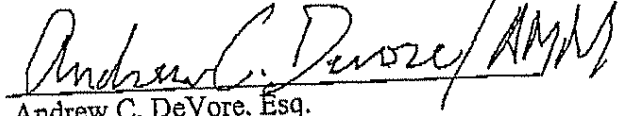
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(908) 598-5777

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Andrew C. DeVore, Esq.

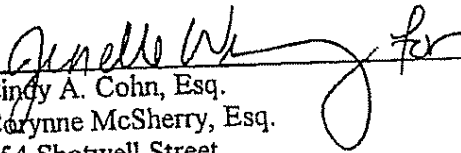
7 Times Square

New York, New York 10036

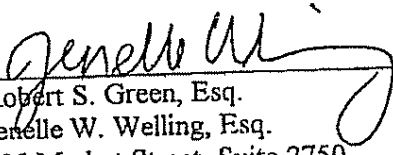
(212) 790-4535

*Attorneys for Defendants
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MediaMax Technology Corp.*

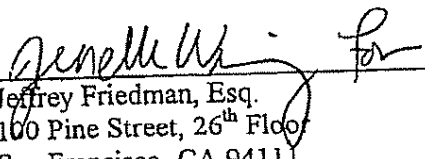
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Settlement Agreement -- Exhibit A

XCP Titles Distributed in the United States¹

ARTIST	TITLE	ITEM NUMBER(S)	UPC(S)
A Static Lullaby	Faso Latido	CK92772	827969277225
Acceptance	Phantoms	CK89016	696998901629
Amerie	Touch	CK90763	827969076323
Art Blakey	Drum Suit	CK93637	827969363720
The Bad Plus	Suspicious Activity?	CK94740	827969474020
Bette Midler	Sings the Peggy Lee Songbook	CK95107 CK74815	827969510728 828767481524
Billie Holiday	The Great American Songbook	CK94294	827969429426
Bob Brookmeyer	Bob Brookmeyer & Friends	CK94292	827969429228
Buddy Jewell	Times Like These	CK92873	827969287323
Burt Bacharach	At This Time	CK97734	827969773420
Celine Dion	On Ne Change Pas	E2K97736	827969773628
Chayanne	Cautivo	LAK96819 LAK96818 LAK95886	037629681921 037629681822 037629588626
Chris Botti	To Love Again	CK94823	827969482322
The Coral	The Invisible Invasion	CK94747	827969474723
Cyndi Lauper	The Body Acoustic	EK94569	827969456927
The Dead 60's	The Dead 60's	EK94453	827969445327
Deniece Williams	This Is Niecy	CK93814	827969381427
Dextor Gordon	Manhattan Symphonie	CK93581	827969358122
Dion	The Essential Dion	CK92670	827969267028
Earl Scruggs	I Saw The Light With Some Help From My Friends	CK92793	827969279328
Elkland	Golden	CK92036	827969203620
Emma Roberts	Unfabulous And More: Emma Roberts	CK93950 CK97684	827969395028 827969768426
Flatt & Scruggs	Foggy Mountain Jamboree	CK92801	827969280126
Frank Sinatra	The Great American Songbook	CK94291	827969429129

¹ Three titles — Ricky Martin, “Life”; Peter Gallagher, “7 Days in Memphis”; and a limited number of “Hidden Beach Presents Unwrapped Vol. 4” — were released with a content protection grid on the back of the CD packaging but XCP content protection software was not actually included on the albums.

G3	Live In Tokyo	E2K97685	827969768525
George Jones	My Very Special Guests	E2K92562	827969256220
Gerry Mulligan	Jeru	CK65498	074646549827
Horace Silver	Silver's Blue	CK93856	827969385623
Jane Monheit	The Season	EK97721	827969772126
Jon Randall	Walking Among The Living	EK92083	827969208328
Life Of Agony	Broken Valley	EK93515	827969351529
Louis Armstrong	The Great American Songbook	CK94295	827969429525
Mary Mary	Mary Mary	CK94812 CK92948	000768353721 827969294826
Montgomery Gentry	Something To Be Proud Of: The Best of 1999-2005	CK75324 CK94982	828767532424 827969498224
Natasha Bedingfield	Unwritten	EK93988	827969398821
Neil Diamond	12 Songs	CK94776 CK97811	827969477625 827969781128
Nivea	Complicated	82876671562	828766715620
Our Lady Peace	Healthy In Paranoid Times	CK94777	827969477724
Patty Loveless	Dreamin' My Dreams	EK94481	827969448120
Pete Seeger	The Essential Pete Seeger	CK92835	827969283523
Ray Charles	Friendship	CK94564	827969456422
Rosanne Cash	Interiors	CK93655	827969365526
Rosanne Cash	King's Record Shop	CK86994	696998699427
Rosanne Cash	Seven Year Ache	CK86997	696998699724
Shel Silverstein	The Best Of Shel Silverstein	CK94722	827969472224
Shelly Fairchild	Ride	CK90355	827969035528
Susie Suh	Susie Suh	EK92443	827969244326
Switchfoot	Nothing Is Sound	CK96534 CK96437 CK94581	827969653425 827969643723 827969458129
Teena Marie	Robbery	EK93817	827969381724
Trey Anastasio	Shine	CK96428	827969642825
Van Zant	Get Right With The Man	CK93500	827969350027
Vivian Green	Vivian	CK90761	827969076125

MediaMax 5.0 Titles Distributed in the United States

ARTIST	TITLE	SELECTION #
Alicia Keys	Unplugged	82876674242
		82876731662
Amici Forever	Defined	82876688832
Babyface	Grown & Sexy	82876705682
Black Rebel Motorcycle Club	Howl	8287671601
Britney Spears	Hitme - Remix	82876740622
Cassidy	I'm A Hustla	82876687072
		82876680732
Chris Brown	Chris Brown	82876733222
Cook, Dixon & Young	Volume One	82876673342
David Gray	Life In Slow Motion	82876710682
Dido	Dido Live	82876658099
Faithless	Forever Faithless/ENH	82876710142
Imogen Heap	Speak For Yourself	82876725322
Judd & Maggie	Subjects	82876692492
Leo Kottke/Mike Gordon	Sixty Six Steps	82876689092
Maroon 5	Live	82876709742
		82876699522
My Morning Jacket	Z	82876710672
Raheem Devaughn	The Love Experience	82876537232
Santana	All That I Am	82876597732
Sarah McLachlan	Bloom (Remix Album)	82876697982
Stellastarr*	Harmonies for the Haunted	82876688812
Syleena Johnson	Chapter 3: The Flesh	82876610932
T-Pain	Rappa Ternt Sanga	82876734472
		82876732002
Various	So Amazing: An All Star Tribute To Luther Vandross	82876624722
Various	Songs Brown Hotel	82876714112
Wakefield	Which Side Are You On?	82876685072
		82876681352
Charlie Wilson	Charlie, Last Name Wilson	82876694292
YoungBloodZ	Everybody Know Me	82876733402
		82876731752

MediaMax 3.0 Titles Distributed in the United States

ARTIST	TITLE	SELECTION #
Anderson, Keith	Three Chord Country	82876662942
Backstreet Boys	Never Gone (Walmart)	82876702442
Backstreet Boys	Never Gone (Target)	82876705342
Backstreet Boys	Never Gone	82876696112
Brickman, Jim	Grace	82876679792
Brickman, Jim	Grace (Provident Version)	82876687952
Citizen Cope	Clarance Greenwood Recordings	82876521142
Charlotte Martin	On Your Shore	82876606762
Chieftains, The	Live From Dublin	82876671372
Clay Aiken	Merry Christmas	82876626222
Dave Matthews Band	Stand Up	82876687962
Dido	"White Flag" W/Enhanced Features (Maxi	
Foo Fighters	In Your Honor (Bb Version)	82876705282
Foo Fighters	In Your Honor	82876680382
40 Below Summer	The Mourning After	79301828982
Hamilton, Anthoney	Coming From Where I'm From	82876521072
J-Kwon	Hood Hop (Edited)	82876583672
J-Kwon	Hood Hop (Ex)	82876576132
Kasabian	Kasabian	82876664282
Kings Of Leon	Aha Shake Heartbreak	82876645442
Mclachlan, Sarah	"Fallen" W/Enhanced Features (Maxi Single)	82876601432
Mclachlan, Sarah	Afterglow Live	82876644942
Mclachlan, Sarah	Afterglow Live	82876645432
Nodesha	Get It While It's Hot (Maxi Single)	82876566902
Sahara Hotnights	Kiss & Tell	82876626892
Silvertide	Show & Tell	82876644022
Silvertide	Show & Tell (Ex)	82876609892
Soundtrack	Xxx: State Of The Union	82876679222
Soundtrack	Xxx: State Of The Union	82876681092
Stone, Angie	Stone Love	82876562152

Tha' Rayne	Didn't You Know (Maxi Single)	82876566882
Velvet Revolver	Contraband (Bb Version)	82876665102
Velvet Revolver	Contraband (Ed)	82876605242
Velvet Revolver	Contraband (Ex)	82876597942
Yung Wun	The Dirtiest Thir(Ex	82876607672
Yung Wun	The Dirtiest Thirstiest	82876609492
Various	Relaxation: A Windham Hill Collection	82876629422

Settlement Agreement -- Exhibit B

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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In re SONY BMG CD Technologies Litigation : No. 1:05-cv-09575-NRB
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FINAL ORDER AND JUDGMENT

WHEREAS, SONY BMG Music Entertainment (“SONY BMG”) markets and, directly and indirectly, including through retailers, sells, among other things, compact discs (“CDs”) containing music from a wide variety of genres; and

WHEREAS, during the period beginning on August 1, 2003 through the present, some, but not all, of the CD titles marketed and sold by SONY BMG, contained, in addition to tracks of music, software (referred to herein as “Content Protection Software”) that, when the CDs were inserted into computers with CD player/recorder drives, enable consumers to transfer the music to their computers, from which consumers could make other authorized uses (including transferring the music to portable devices and copying the music onto no more than three blank CDs), and which prohibit other uses; and

WHEREAS, SONY BMG used two types of Content Protection Software on CDs during the Class Period, “MediaMax” and “XCP”; and

WHEREAS, two versions of “MediaMax” — MediaMax 3.0 and MediaMax 5.0 — were designed and licensed to SONY BMG by SunnComm International Inc., a Nevada corporation

headquartered in Arizona (Sunncomm International Inc. and another Nevada corporation headquartered in Arizona, MediaMax Technology Corp. being collectively referred to herein as “SunnComm”); and

WHEREAS, the MediaMax software included on SONY BMG CDs sold to consumers during the Class Period will be referred to herein as the “MediaMax Software,” and a SONY BMG CD or copy thereof containing MediaMax Software will be referred to herein as a “MediaMax CD”; and

WHEREAS, various versions of “XCP” were designed and licensed to SONY BMG by First 4 Internet Ltd. (“F4I,” and, collectively with SONY BMG and SunnComm, the “Defendants”), a corporation located in and organized under the laws of the United Kingdom; and

WHEREAS, the XCP versions included on SONY BMG CDs sold to consumers during the Class Period will be referred to herein as the “XCP Software,” and a SONY BMG CD or copy thereof containing XCP Software will be referred to herein as an “XCP CD”; and

WHEREAS, the following CD titles distributed by SONY BMG are XCP CDs:

A Static Lullaby	Faso Latido
Acceptance	Phantoms
Amerie	Touch
Art Blakey	Drum Suit
The Bad Plus	Suspicious Activity?
Bette Midler	Sings the Peggy Lee Songbook
Billie Holiday	The Great American Songbook
Bob Brookmeyer	Bob Brookmeyer & Friends
Buddy Jewell	Times Like These
Burt Bacharach	At This Time

Celine Dion	On Ne Change Pas
Chayanne	Cautivo
Chris Botti	To Love Again
The Coral	The Invisible Invasion
Cyndi Lauper	The Body Acoustic
The Dead 60's	The Dead 60's
Deniece Williams	This Is Niecy
Dextor Gordon	Manhattan Symphonie
Dion	The Essential Dion
Earl Scruggs	I Saw The Light With Some Help From My Friends
Elkland	Golden
Emma Roberts	Unfabulous And More: Emma Roberts
Flatt & Scruggs	Foggy Mountain Jamboree
Frank Sinatra	The Great American Songbook
G3	Live In Tokyo
George Jones	My Very Special Guests
Gerry Mulligan	Jeru
Horace Silver	Silver's Blue
Jane Monheit	The Season
Jon Randall	Walking Among The Living
Life Of Agony	Broken Valley
Louis Armstrong	The Great American Songbook
Mary Mary	Mary Mary
Montgomery Gentry	Something To Be Proud Of: The Best of 1999-2005
Natasha Bedingfield	Unwritten
Neil Diamond	12 Songs
Nivea	Complicated

Our Lady Peace	Healthy In Paranoid Times
Patty Loveless	Dreamin' My Dreams
Pete Seeger	The Essential Pete Seeger
Ray Charles	Friendship
Rosanne Cash	Interiors
Rosanne Cash	King's Record Shop
Rosanne Cash	Seven Year Ache
Shel Silverstein	The Best Of Shel Silverstein
Shelly Fairchild	Ride
Susie Suh	Susie Suh
Switchfoot	Nothing Is Sound
Teena Marie	Robbery
Trey Anastasio	Shine
Van Zant	Get Right With The Man
Vivian Green	Vivian

WHEREAS, the following CD titles distributed by SONY BMG are MediaMax CDs containing MediaMax 3.0:

Anderson, Keith	Three Chord Country
Backstreet Boys	Never Gone (Walmart)
Backstreet Boys	Never Gone (Target)
Backstreet Boys	Never Gone
Brickman, Jim	Grace
Brickman, Jim	Grace (Provident Version)
Citizen Cope	Clarence Greenwood Recordings
Charlotte Martin	On Your Shore
Chieftains, The	Live From Dublin
Clay Aiken	Merry Christmas
Dave Matthews Band	Stand Up
Dido	"White Flag" W/Enhanced Features (Maxi Single)

Foo Fighters	In Your Honor (Bb Version)
Foo Fighters	In Your Honor
40 Below Summer	The Mourning After
Hamilton, Anthony	Coming From Where I'm From
J-Kwon	Hood Hop (Edited)
J-Kwon	Hood Hop (Ex)
Kasabian	Kasabian
Kings Of Leon	Aha Shake Heartbreak
McLachlan, Sarah	"Fallen" W/Enhanced Features (Maxi Single)
McLachlan, Sarah	Afterglow Live
McLachlan, Sarah	Afterglow Live
Nodesha	Get It While It's Hot (Maxi Single)
Sahara Hotnights	Kiss & Tell
Silvertide	Show & Tell
Silvertide	Show & Tell (Ex)
Soundtrack	Xxx: State Of The Union
Soundtrack	Xxx: State Of The Union
Stone, Angie	Stone Love
Tha' Rayne	Didn't You Know (Maxi Single)
Velvet Revolver	Contraband (Bb Version)
Velvet Revolver	Contraband (Ed)
Velvet Revolver	Contraband (Ex)
Yung Wun	The Dirtiest Thirstiest (Ex)
Yung Wun	The Dirtiest Thirstiest
Various	Relaxation: A Windham Hill Collection

WHEREAS, the following CD titles distributed by SONY BMG are MediaMax CDs containing MediaMax 5.0:

Alicia Keys	Unplugged
Amici Forever	Defined
Babyface	Grown & Sexy
Black Rebel Motorcycle Club	Howl
Britney Spears	Hitme - Remix
Cassidy	I'm A Hustla

Chris Brown	Chris Brown
Cook, Dixon & Young	Volume One
David Gray	Life In Slow Motion
Dido	Dido Live
Faithless	Forever Faithless/ENH
Imogen Heap	Speak For Yourself
Judd & Maggie	Subjects
Leo Kottke/Mike Gordon	Sixty Six Steps
Maroon 5	Live
My Morning Jacket	Z
Raheem Devaughn	The Love Experience
Santana	All That I Am
Sarah McLachlan	Bloom (Remix Album)
Stellastarr*	Harmonies for the Haunted
Syleena Johnson	Chapter 3: The Flesh
T-Pain	Rappa Ternt Sanga
Various	So Amazing: An All Star Tribute To Luther Vandross
Various	Songs Brown Hotel
Wakefield	Which Side Are You On?
Charlie Wilson	Charlie, Last Name Wilson
YoungBloodZ	Everybody Know Me

WHEREAS, six complaints—*Maletta v. SONY BMG Music Entm't*, No. 05 CV 10637 (UA) (S.D.N.Y. Dec. 19, 2005); *Ricciuti v. SONY BMG Music Entm't*, No. 05 CV 10190, consolidated as No. 05 CV 9609(NRB) (S.D.N.Y. Dec. 5, 2005); *Klewan v. Arista Holdings Inc. d/b/a SONY BMG Music Entm't*, No. 05 CV 9609, consolidated as No. 05 CV 9575 (NRB) (S.D.N.Y. Nov. 14, 2005); *Michaelson v. SONY BMG Music, Inc.*, No. 05 CV 9575 (NRB) (S.D.N.Y. Nov. 14, 2005); *Potter v. SONY BMG Music Entm't*, No. 05 CV 9607, consolidated as No. 05 CV 9575 (NRB) (S.D.N.Y. Nov. 14, 2005); *Rivas v. SONY BMG Music Entm't*, No. 05 CV 9598, consolidated as No. 05 CV 9575 (NRB) (S.D.N.Y. Nov. 14, 2005)—were filed in the Southern District of New York and are subject to consolidation before the Honorable Naomi Reice Buchwald into the above-referenced *SONY BMG CD Technologies Litigation* (the “Action”); and

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WHEREAS, a Consolidated Amended Complaint in the Action (hereafter, the “Complaint”) was filed on December 28, 2005; and

WHEREAS, as of the date of Settlement, other complaints raising substantially identical claims (collectively, the “Non-S.D.N.Y. Actions”) have been filed in other jurisdictions as follows: *Black v. SONY BMG Music Entm’t*, No. CIV-05-1315 WDS/RLP (D. N.M. Dec. 19, 2005); *Klemm v. SONY BMG Music Entm’t*, No. C 05 5111 BZ (N.D. Cal. Dec. 9, 2005); *Melcon v. SONY BMG Music Entm’t*, No. C 05 5084 MHP (N.D. Cal. Dec. 8, 2005); *Ponting v. SONYBMG Music Entm’t, LLC*, No. CV-05-08472-JFW(AJWx) (C.D. Cal. Dec. 2, 2005); *Jacoby v. SONY BMG Music Entm’t*, No. 05/116679 (N.Y. Sup. Ct. Nov. 30, 2005); *Bahnmaier v. SONY BMG Music Entm’t*, No. CJ 2005 06968 (Okla. Dist. Ct. Nov. 28, 2005); *Xanthakos v. SONY BMG Music Entm’t, LLC*, No. 05-0009203 (D.C. Super. Ct. Nov. 28, 2005); *Maletta v. SONY BMG Music Entm’t Corp.*, No. BC343615 (Cal. Super. Ct. Nov. 28, 2005); *Burke v. SONY BMG Music Entm’t*, No. 857213 (Cal. Super. Ct. Nov. 22, 2005); *Hull v. SONY BMG Music Entm’t*, No. BC343385 (Cal. Super. Ct. Nov. 21, 2005); *Cooke v. SONY BMG Music Entm’t*, No. 05-0009093 (D.C. Super. Ct. Nov. 18, 2005); *DeMarco v. SONY BMG Music*, No. 2:05-cv-05485-WHW-SDW (D.N.J. Nov. 17, 2005); *Stynchula v. Sony Corp. of Am.*, No. BC343100 (Cal. Super. Ct. Nov. 15, 2005); *Gruber v. Sony Corp. of Am.*, No. BC342805 (Cal. Super. Ct. Nov. 9, 2005); *Guevara v. SONY BMG Music Entm’t*, No. BC342359 (Cal. Super. Ct. Nov. 1, 2005) (although several of the complaints in the Action and the Non-S.D.N.Y. Actions misstate the name of SONY BMG, it is understood that SONY BMG is the defendant meant to have been named in each such complaint); and

WHEREAS, the Complaint and the complaints in the Non-S.D.N.Y. Actions allege that, when and if an XCP CD is inserted into a computer, an End User License Agreement (a

“EULA”, and, with respect to XCP CDs, the “XCP EULA”) appears automatically on the screen and the XCP Software installs itself on the user’s computer; and

WHEREAS, the Complaint and the complaints in the Non-S.D.N.Y. Actions assert that the XCP Software contains a potentially harmful “rootkit” which renders the user’s computer more vulnerable to “malware” promulgated by third parties, including “viruses,” “Trojan Horses” and “spyware,” than the computers would have been had the software not been installed; and

WHEREAS, the Complaint and the complaints in the Non-S.D.N.Y. Actions allege that the XCP Software interferes with the user’s ability to access the music via non-XCP software, consumes excess computer resources and causes system errors; and

WHEREAS, the Complaint and the complaints in the Non-S.D.N.Y. Actions allege that SONY BMG, including through the XCP EULA, misrepresented, or did not fully or adequately disclose, the true nature of the XCP Software; and

WHEREAS, the Complaint and the complaints in the Non-S.D.N.Y. Actions allege that the XCP EULA contained terms that are unconscionable or otherwise unenforceable; and

WHEREAS, the Complaint and the complaints in the Non-S.D.N.Y. Actions allege that once installed, the XCP Software is difficult to locate and remove, and that SONY BMG did not make available a ready means to uninstall the XCP Software; and

WHEREAS, the Complaint and the complaints in the Non-S.D.N.Y. Actions allege that when SONY BMG made an uninstaller program available to remove the XCP Software, this program also created a security risk; and

WHEREAS, the Complaint and the complaints in the Non-S.D.N.Y. Actions allege that, when a MediaMax CD is inserted into a computer, a EULA appears automatically on the screen (for CDs containing the MediaMax 3.0 software, the “MediaMax 3.0 EULA”; for CDs

containing the MediaMax 5.0 software, the "MediaMax 5.0 EULA"; each, a "MediaMax EULA", and collectively, the "MediaMax EULAs"), and that certain software files are immediately loaded onto the computer even before the user of the MediaMax CD has an opportunity to accept or reject the MediaMax EULA; and

WHEREAS, the Complaint and the complaints in the Non-S.D.N.Y. Actions allege that this software remains on the computer even if the MediaMax EULA is rejected; and

WHEREAS, the Complaint and the complaints in the Non-S.D.N.Y. Actions also allege that SONY BMG, including through the MediaMax EULAs, misrepresented, or did not fully or adequately disclose, the true nature of the MediaMax Software; and

WHEREAS, the Complaint and the complaints in the Non-S.D.N.Y. Actions allege that the MediaMax EULAs contained terms that are unconscionable or otherwise unenforceable; and

WHEREAS, the Complaint and the complaints in the Non-S.D.N.Y. Actions allege that at least one version of MediaMax Software causes a file folder to be installed on a user's computer that renders the user's computer more vulnerable to security breaches by third parties by allowing these third parties to gain enhanced permissions over the user's computer running the Windows operating system; and

WHEREAS, the Complaint and the complaints in the Non-S.D.N.Y. Actions allege that SONY BMG did not make available a ready means to uninstall the MediaMax Software; and

WHEREAS, the Complaint and the complaints in the Non-S.D.N.Y. Actions allege that when SONY BMG made a program available to uninstall the MediaMax Software, this program also created a security risk; and

WHEREAS, the Complaint and the complaints in the Non-S.D.N.Y. Actions claim that the SONY BMG and F4I, by disseminating the XCP Software on XCP CDs, and that SONY BMG and SunnComm, by disseminating the Media Max software on Media Max CDs, violated,

among other things, the Computer Fraud and Abuse Act (“CFAA”), 18 U.S.C. § 1030, et seq.; the consumer fraud, false advertising, and/or deceptive trade practices laws of the several states, and state and federal common law; and

WHEREAS, the Complaint seeks injunctive relief, equitable relief, restitution, and damages on behalf of a nationwide class of consumers who used any of the MediaMax CDs and/or the XCP CDs; and

WHEREAS, the plaintiffs in the Non-S.D.N.Y. Actions seek essentially the same relief on behalf of a nationwide class or the residents of individual states; and

WHEREAS, Plaintiffs, through their counsel, have conducted an investigation of the facts and analyzed the relevant legal issues and believe that the claims asserted in the complaints have substantial merit, have examined the benefits to be obtained under the proposed Settlement, including the prompt removal of XCP CDs from the market, SONY BMG’s ceasing production of the MediaMax software and in the testing of and disclosures regarding future Content Protection Software, and have considered the risks, costs and delays associated with the continued prosecution of this litigation and the likely appeals of any rulings in favor of either Plaintiffs or Defendants; and

WHEREAS, Defendants have conducted an investigation of the facts and analyzed the relevant legal issues; and

WHEREAS, Defendants deny all liability with respect to any and all facts or claims alleged in the Complaint, and believe that their defenses to the claims asserted in the Complaint have substantial merit; and

WHEREAS, Defendants also have weighed the potential risks, costs and delays associated with continued litigation of the Actions against the benefits of the proposed Settlement; and

WHEREAS, each of the Parties and counsel believes, in consideration of all the circumstances and after substantial arms' length settlement negotiations between counsel, that its interests are best served by entering into the settlement set forth in the Settlement Agreement, and that this proposed settlement is fair, reasonable, adequate and in the best interests of the Settlement Class; and

WHEREAS, the Parties also acknowledge that SONY BMG is subject to one lawsuit (*Texas v. SONY BMG Music Entertainment*, Dist. Ct., Travis Co, Tex.), an inquiry by the Federal Trade Commission, and numerous investigations by state attorneys general or other governmental authorities in various jurisdictions (together, the "Government Inquiries"), all of which cover materially the same subject matter as the Complaint and complaints in the Non-S.D.N.Y. Actions; and

WHEREAS, it is the intention of SONY BMG to seek to settle the Government Inquiries on an agreed basis to the maximum extent possible, with settlement term(s) to be disclosed to Plaintiffs' Class Counsel, the Court and the public; and

WHEREAS, it is the intention of the Parties that the terms of the Settlement Agreement be complementary to the terms of the anticipated settlement(s) of the Government Inquiries, particularly with respect to injunctive relief; and

WHEREAS, the Settlement Agreement among the parties defines "Released Claims" as any and all claims, rights, damages, losses, demands, obligations, actions, causes of action, suits, cross-claims, matters, issues, debts, liens, contracts, liabilities, agreements, costs, or expenses, of any nature whatsoever, ascertained or unascertained, suspected or unsuspected, existing or claimed to exist, including Unknown Claims, of any and all Plaintiffs and/or Settlement Class Members arising out of any purchase or use by them of an XCP CD or a MediaMax CD, the XCP Update (as defined below), the XCP Uninstaller (as defined below), the MediaMax Update

(as defined below), or the MediaMax Uninstaller (as defined below) or any installation or de-installation of XCP Software or MediaMax Software at any time, to the extent that such claims: (a) arise out of the Action or the Non-S.D.N.Y. Actions; (b) relate to any allegations that either were or could have been asserted in the Action or the Non-S.D.N.Y. Actions; or (c) which might in the future be asserted by any Plaintiff or Settlement Class Member, against any of the Released Parties that would arise out of, or relate to in any manner, directly or indirectly, any acts, facts, transactions, occurrences, conduct, representations or omissions alleged in the Action and the Non-S.D.N.Y. Actions, including, without limitation, claims respecting any disclosure, advertising or other descriptions of, or claims relating to (i) the nature, quality, value, and/or functionality of the MediaMax CDs, the XCP CDs, the MediaMax Software, MediaMax Update, MediaMax Uninstaller, XCP Software, XCP Update or XCP Uninstaller; and/or (ii) the EULAs, and/or (iii) the alleged collection by Defendants of Personal Data or IP addresses. Released Claims also include claims for abuse of process, malicious prosecution or any other claim arising out of, relating to, or in connection with the defense or resolution of the Action. For avoidance of doubt, Released Claims include claims relating to (i) the asserted costs of removing XCP Software and/or MediaMax Software from a computer or network and (ii) damages caused by negligent removal of XCP Software and/or MediaMax Software. The sole exception to the definition of Released Claims is that such claims do not include claims for consequential damage to a computer or network that may or are alleged to have resulted from interactions between the XCP Software or the MediaMax Software and other software or hardware installed on such computer or network. (For avoidance of doubt, Released Claims also do not include copyright, trademark or other claims concerning the ownership of intellectual property rights in the MediaMax Software or the XCP Software, or any uninstallers or updates thereto, which were not alleged); and

WHEREAS, the Settlement Agreement among the parties defines “Released Parties” as each and all of the Defendants and each and all of Defendants’ direct and indirect parent companies including, in the case of SONY BMG and without limitation, Sony Corporation and Bertelsmann AG, and each and all of each of Sony Corporation’s, Bertelsmann AG’s and Defendants’ respective divisions and direct and indirect subsidiaries, affiliates, partners, joint ventures, predecessors and successor corporations and business entities, and each and all of their past and present officers, directors, servants, licensees, joint ventures, sureties, attorneys, agents, consultants, advisors, contractors, employees, controlling or principal shareholders, general or limited partners or partnerships, divisions, insurers, designated management companies, and each and all of their successors or predecessors in interest, assigns, or legal representatives, and any persons or entities that have designed, developed, programmed, manufactured, supplied, advertised, marketed, distributed or sold MediaMax CDs and/or XCP CDs or software thereon; and.

WHEREAS, the Parties intend that the proposed Settlement embodied in the Settlement Agreement will resolve all Released Claims, including Unknown Claims (as that term is defined in the Settlement Agreement) against all Released Parties; and

WHEREAS, the Parties have engaged in intensive, complex, difficult and hard-fought arm’s-length negotiations; and

WHEREAS, as a result of those lengthy negotiations, the Parties have been able to reach an agreement to settle these Actions; and

WHEREAS, by the terms of the proposed Settlement of this Action, in exchange for the dismissal of the Action with prejudice, dismissal of all Released Claims with prejudice, and for entry of this Final Order and Judgment, within thirty (30) days after the Preliminary Approval Date, SONY BMG shall make available to all Settlement Class members all of the benefits and

relief set forth in the Settlement Agreement, the terms of which are expressly incorporated by reference herein, in accordance with the procedures set forth therein; and

WHEREAS, if, after the date on which the Settlement Agreement was executed, SONY BMG enters into any settlement agreement, consent decree, assurance of discontinuance or other, similar pre-trial resolution with a State Attorney General, or any class action settlement, in which SONY BMG undertakes to provide additional benefits directly to all Settlement Class Members who reside in any single state or states respecting Released Claims, SONY BMG agrees to offer the same benefits to all Settlement Class Members; and

WHEREAS, the parties expect that, by the date of the Fairness Hearing, SONY BMG will have entered into an enforceable, nationwide agreement resolving one or more of the Government Inquiries; and the parties also expect that the resolution of these Government Inquiries will include, at least, the restrictions on SONY BMG's future conduct stated below in the paragraph immediately following this paragraph; if, as of the date of the Fairness Hearing, SONY BMG has not entered into such an enforceable agreement, and/or if such agreement is not nationwide in scope and does not address each and every one of the provisions stated below in the paragraph immediately following this paragraph, then as of the date of the Fairness Hearing, the Settlement Agreement will be deemed amended to include an entitlement by Settlement Class Members to an injunction, during the Injunctive Period, addressing each and every such provision not addressed; and

WHEREAS, to the extent not covered in an agreement to resolve the Government Inquiries, SONY BMG shall, during the Injunctive Period, adhere to all of the affirmative and negative restrictions on its use of Content Protection Software described in Section IV of the Settlement Agreement; and

WHEREAS, on or about December 28, 2005, the Parties, by their duly authorized counsel, entered into a Settlement Agreement, which provides that, subject to the approval of this Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the claims asserted in this Action against Defendants were to be settled, compromised and dismissed with prejudice, upon and subject to the terms and conditions set forth therein; and

WHEREAS, on January __, 2006, this Court entered a Hearing Order (the "Hearing Order"), which, *inter alia*:

(a) certified, for settlement purposes only, pursuant to Rule 23(a) and Rules 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure, a class consisting of the named Plaintiffs in the Action and all natural persons or entities in the United States who purchased, received, came into possession of or otherwise used one or more MediaMax CDs and/or XCP CDs prior to the Effective Date ("Settlement Class"); excluding Released Parties; SONY BMG-authorized resellers or distributors of the XCP CDs and MediaMax CDs; current or former employees of Released Parties; and any persons or entities that have previously executed releases discharging Defendants from liability concerning or encompassing any or all claims that are the subject of the Action and the Non-S.D.N.Y. Actions;

(b) appointed [insert names] as representatives of the Settlement Class;

(c) appointed Kamber & Associates, LLC and Girard Gibbs & De Bartolomeo LLP as Class Co-Counsel for the Settlement Class;

(d) preliminarily approved the Settlement, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure;

(e) set a hearing to take place on ____, 2006, at _____.m., before this Court, at the Daniel Patrick Moynihan United States Courthouse for the Southern District of New York, 500 Pearl Street, Room 2270, New York, New York (the "Fairness Hearing"), upon notice to members of the Settlement Class, to determine whether:

(i) the requirements for certification of the Settlement Class have been met;

(ii) the proposed settlement of the Action in accordance with the terms set forth in the Settlement Agreement, including as part of the Settlement the payment of Plaintiffs' counsel's attorneys' fees and reimbursement of Plaintiffs' counsel's expenses, should be approved as fair, reasonable and adequate; and

(iii) the Judgment approving the Settlement and dismissing the Action on the merits and with prejudice against Plaintiffs and Settlement Class Members should be entered.

(f) approved the form of the Notice of Pendency and Settlement Class Action (the "Full Settlement Notice"), substantially in the form of Exhibit F annexed to the Settlement Agreement, which contains instructions for Settlement Class Members to obtain the settlement benefits referenced in the Settlement Agreement, and approved the summary form of that Settlement Notice, substantially in the form of Exhibit G, annexed to the Settlement Agreement;

(g) prescribed the method and period of time for providing notice to members of the Settlement Class of the certification of the Settlement Class; the Settlement; Plaintiffs' counsel's application for an award of attorneys' fees and reimbursement of expenses; and the Fairness Hearing;

(h) directed that Defendants and Plaintiffs' Class Counsel, as applicable, shall promptly respond to all requests for copies of the Full Settlement Notice and printed Claim Form by mailing the documents to any Settlement Class Members who shall make such requests;

(i) found that such notice to the members of the Settlement Class as described in the Settlement Agreement: (i) is the best notice practicable to members of the Settlement Class; (ii) is reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the Action, conditional certification of the Settlement Class, the proposed Settlement, and the rights of members of the Settlement Class to object to the Settlement; to request exclusion from the Settlement Class; and the application of Plaintiffs' counsel for an award of attorneys' fees and reimbursement of expenses; (iii) is reasonable and constitutes due, adequate and sufficient notice to all persons and entities entitled to receive notice; and (iv) meets all applicable requirements of law including, but not limited to, Rule 23(c) of the Federal Rules of Civil Procedure and the Due Process Clause of the Fourteenth Amendment of the United States Constitution;

(j) directed Plaintiffs' Class Counsel and Defendants' counsel, on or before _____, 2006, to file with the Court evidence that the provisions of paragraphs 9 and 10 of the Hearing Order had been satisfied, which they did;

(k) prescribed the method and period of time during which members of the Settlement Class may file requests to be excluded from the Settlement Class;

(l) provided that, whether or not the Effective Date occurs, any member of the Settlement Class who does not properly and timely request exclusion from the Settlement Class shall be bound by any and all judgments and settlements entered or approved by this Court, whether favorable or unfavorable to the Settlement Class;

(m) prescribed the method and periods of time during which members of the Settlement Class may serve written objections to the Settlement and/or the application for an award of attorneys' fees and/or reimbursement of expenses by Plaintiffs' counsel;

(n) prescribed the methods and periods of time during which members of the Settlement Class must apply for the applicable relief by, *inter alia*, completing a printed

Claim Form such as that attached to the Settlement Agreement as Exhibit C, in order to obtain those facets of the Settlement for which the completion of a Claim Form is required;

(o) directed that if, for any reason, the notice to the Settlement Class Members is not or cannot be provided before February 1, 2006, the Parties will confer in good faith and recommend to the Court that the date by which any Settlement Class Member must seek to receive one or more of the settlement benefits be extended correspondingly;

(p) directed that if the settlement benefits available to Settlement Class Members change, including by operation of Section III(V) of the Settlement Agreement, no new notice need issue to Settlement Class Members;

(q) prescribed the date by which Defendants shall provide notice of the Settlement Agreement to the authorities required to be notified of prospective class action settlements under the Class Action Fairness Act of 2005;

(r) directed that SONY BMG shall pay all costs associated with providing notice to the members of the Settlement Class;

(s) required SONY BMG, between the Preliminary Approval Date and _____, 2006, to cause an independent third party to investigate whether SONY BMG has collected, aggregated or retained personal data in a manner inconsistent with the Settlement Agreement, Paragraph III.S, and to provide the third party's conclusions to Plaintiffs' Class Counsel and to the Court prior to the Fairness Hearing and post the third party's conclusions on its website no more than thirty (30) days after receiving those conclusions, which it did;

(t) preliminarily barred and enjoined Plaintiffs and all members of the Settlement Class and any other person, representative, or entity acting on behalf of any members of the Settlement Class from: (i) filing, commencing, prosecuting, maintaining, or intervening in any claim, lawsuit, arbitration, administrative, regulatory or other proceeding (as members of a class action or otherwise) arising out of the Released Claims against any of the Released Parties; and (ii) organizing or soliciting the participation of any members of the Settlement Class into a separate class for purposes of pursuing as a purported class action (including by seeking to amend a pending complaint to include class allegations, or by seeking class certification in a pending action) any claim, lawsuit or other proceeding arising out of the Released Claims against any of the Released Parties;

(u) provided that if for any reason, the Effective Date of the Settlement does not occur, the Hearing Order shall become null and void, and shall be without prejudice to the rights of the parties, all of whom shall be restored to their respective positions as of December 22, 2005, except that any extensions of time granted since that date by one Party to the other shall continue to have force and effect, and neither Party shall seek an order of default against any other Party for actions not taken while approval of the Settlement was pending, and the Settlement and Settlement Agreement shall become null and void and be of no further force and effect, and neither the Settlement Agreement nor the Court's orders issued in connection with consideration of the Settlement, including this Order, shall be used or referred to in any litigation for any purpose whatsoever, except as required to enforce those provisions of the Settlement Agreement which survive a failure of the Settlement to be

consummated or the Effective Date of the Settlement to occur including, without limitation, paragraphs IX.A., IX.B., XI.C., XI.D., XI.K., and XI.L. of the Settlement Agreement.

(v) provided that nothing in the Hearing Order shall be construed or used as an admission, concession, or declaration by or against SONY BMG for any fault, wrongdoing, breach or liability; or be construed or used as an admission, concession, or declaration by or against Plaintiffs or the members of the Settlement Class that their claims lack merit or that the relief requested in the operative Complaint in this Action is inappropriate, improper, or unavailable, or as a waiver by any party of any defenses or claims he, she, or it may have; or be construed as a finding or conclusion of the Court with respect to the merit or lack of merit of any claim asserted in the Action or the defense to any claim asserted in the Action; and

WHEREAS, on _____, Defendant submitted to this Court proof of the e-mailing of the Full Statement Notice, the posting of the Full Statement Notice on SONY BMG's website, the use of the "Banner" to provide a link to the Full Settlement Notice, the coordination with prominent search engines, to make the Full Settlement Notice readily accessible on the Internet, and publication of the Summary Settlement Notice, as directed in the Hearing Order, pursuant to which members of the Settlement Class were notified of their rights to: (i) request exclusion from the Settlement Class; or (ii) appear at the hearing in favor of, or opposition to, the Settlement and/or the application of Plaintiffs' counsel for award of fees and reimbursement of expenses; and

WHEREAS, SONY BMG has submitted evidence demonstrating, and the Court finds, that SONY BMG provided the notices to the United States Department of Justice and to the Attorneys General of the 50 States, as required by the Class Action Fairness Act of 2005, Pub. L. 109-2 (2005), and specified in 28 U.S.C. § 1715; and

WHEREAS, the Fairness Hearing was duly held as noticed on _____, 200_; and

WHEREAS, this Court, having heard from Plaintiffs' Class Counsel on behalf of the Settlement Class, and from Defendants' counsel, and having reviewed all other arguments and submissions presented by all interested persons and entities with respect to the Settlement and

the application of Plaintiffs' counsel for an award of attorneys' fees and reimbursement of expenses; and

WHEREAS, all capitalized terms used herein have the meanings set forth and defined in the Settlement Agreement, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. Notice to the members of the Settlement Class required by Rule 23(c) and (e) of the Federal Rules of Civil Procedure has been provided as directed by this Court in the Hearing Order, and such notice having constituted the best notice practicable, including, but not limited to, the forms of notice and methods of identifying and providing notice to the members of the Settlement Class, and satisfied the requirements of the Federal Rules of Civil Procedure, the Constitution of the United States, and all other applicable laws.

2. The Settlement Class as provided in the Hearing Order is unconditionally certified pursuant to Rules 23(a) and Rules 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure.

3. For purposes of all aspects of the Settlement except the provisions of Section IV, with respect to which the Settlement Class will be certified pursuant to Federal Rule of Civil Procedure 23(b)(2), the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the number members of the Settlement Class is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of Plaintiffs are typical of the claims of the Settlement Class they seek to represent; (d) Plaintiffs have and will fairly and adequately represent the interests of the Settlement Class; (e) the questions of law and fact common to the members of the Settlement Class predominate over any questions affecting only individual members of the Settlement Class; and (f) a class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

4. For purposes of the injunctive relief specified in Section IV of the Settlement, the prerequisites for a class action under Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the number members of the Settlement Class is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of Plaintiffs are typical of the claims of the Settlement Class they seek to represent; (d) Plaintiffs have and will fairly and adequately represent the interests of the Settlement Class; and (e) the Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

5. The Settlement, as set forth in the Settlement Agreement, is in all respects fair, reasonable, and adequate, and in the best interests of the Settlement Class Members, and is approved in all respects in accordance with Rule 23 of Federal Rules of Civil Procedure.

6. Plaintiffs and Defendant are directed to promptly consummate the Settlement in accordance with the Settlement Agreement and all of its terms.

7. The Settlement shall not be deemed to constitute an admission or finding of liability or wrongdoing on the part of Defendant, or any of the Plaintiffs, Settlement Class Members, or Released Parties.

8. Those persons appearing on the list annexed hereto as Exhibit A have properly and timely requested exclusion from the Settlement Class, pursuant to the terms of this Court's Hearing Order, and are excluded from the Settlement Class, shall not be bound by this Final Order and Judgment (except with respect to the injunctive relief specified in Section IV of the Settlement Agreement), and shall not participate in the proceeds of the Settlement hereby approved nor receive any benefit thereunder.

9. The Action is hereby dismissed, with prejudice, on the merits, as against all Plaintiffs and all members of the Settlement Class, on the terms and conditions set forth in the Settlement Agreement, and without costs to any party except as provided herein, in the Hearing Order and in the Settlement Agreement.

10. Upon the Effective Date, each Plaintiff and each Settlement Class Member shall be deemed to have, and by operation of this Final Order and Judgment shall have, fully, finally, and forever released, relinquished and discharged all Released Claims (including Unknown Claims) against the Released Parties, in the manner(s) set forth in the Settlement Agreement.

11. Upon the Effective Date, each Plaintiff and each Settlement Class Member shall be permanently barred and enjoined from asserting, commencing, prosecuting or continuing any of the Released Claims.

12. Upon the Effective Date, Defendants shall be deemed to have, and by operation of this Final Order and Judgment shall have, fully, finally and forever released, relinquished and discharged all of the Plaintiffs, Plaintiffs' Class Counsel and all agents of and expert witnesses retained by Plaintiffs' Class Counsel from any claims (including Unknown Claims) for abuse of process, malicious prosecution or any other claim arising out of, relating to, or in connection with the institution, prosecution, assertion or resolution of the Action.

13. Upon the Effective Date, Defendants shall be deemed to have waived the limitation of liability provisions (XCP EULA and MediaMax 5.0 EULA Article 6; MediaMax 3.0 EULA Article 4.1), and the New York forum selection clauses (XCP EULA and MediaMax 5.0 EULA Article 10; MediaMax 3.0 EULA Article 6.1) of the EULAs, only to the extent that a person pursues non-Released Claims against Defendants on an individual, as opposed to class action or mass action, basis.

14. Based on the record and confirmatory discovery obtained by Plaintiffs' Class Counsel, the Court finds that the scope of the Settlement Class and Release are appropriate in light of concerns that non-Released Claims for consequential damages to a computer or network as defined in Section II.O. of the Settlement Agreement may raise questions concerning the predominance and manageability required under Federal Rule of Civil Procedure 23(b)(3).

15. An incentive payment, not to exceed \$1,000, is hereby awarded to each of the following named plaintiffs in the Action and the Non-S.D.N.Y. Actions: **[insert names]**. Defendants shall pay \$1,000 to each of the specified individuals within ten (10) business days after the Effective Date.

16. Plaintiffs' counsel are hereby awarded (i) attorneys' fees in an amount not to exceed **[sum to be specified]**, and (ii) reimbursement of their reasonable documented expenses incurred up to and through the date of the Fairness Hearing in an amount not to exceed **[sum to be specified]**. Such amounts are to be paid to Plaintiffs' Class Counsel by Defendants within ten (10) business days after the Effective Date, and in accordance with Paragraphs __, __ of the Settlement Agreement. Such expenses shall not include any expenses incurred in connection with notice or fulfillment of the Settlement or providing the Settlement Benefit(s) to Settlement Class Members, which costs and expenses shall be borne entirely by Defendants.

17. The award of attorneys' fees to Plaintiffs' counsel, as provided in paragraph 16, above, shall be allocated among Plaintiffs' counsel in a fashion which, in the opinion of Plaintiffs' Class Counsel, fairly compensates Plaintiffs' counsel for their respective contributions in the prosecution of the Action. In making its award of attorneys' fees and reimbursement of expenses, in the amounts described in paragraph 16, above, the Court has considered and finds as follows:

a. The Settlement has provided a significant amount of cash and non-cash relief to the Settlement Class.

b. Defendants' adoption of substantial changes to their business practices and procedures involving the use and appropriate disclosure of Content Protection Software were a negotiated material term of Settlement.

c. The Settlement Notice was published to at least _____ putative Settlement Class members. Only _____ [No] objections were filed against the terms of the proposed Settlement.

d. Plaintiffs' counsel have conducted the litigation and achieved the Settlement with skill, perseverance, and diligent advocacy on behalf of Plaintiffs and the Settlement Class as a whole.

e. The Action involves complex factual and legal issues and, in the absence of Settlement, would involve further lengthy proceedings and uncertain resolution of such issues.

f. Had Settlement not been achieved, there would remain a significant risk that the Settlement Class may have recovered less or nothing from Defendants, and that any recovery would have been significantly delayed which would have resulted in the continued exposure of Settlement Class members' computers to security vulnerabilities.

g. The amount of attorneys' fees and reimbursable expenses awarded to Plaintiffs' counsel is fair and reasonable, given the number of attorney hours expended to achieve the Settlement on behalf of Plaintiffs and the Settlement Class as a whole, and the estimated value of the settlement benefits obtained for the Settlement Class, and the amount awarded is consistent with awards for similar work in similar cases.

18. Following the Effective Date, Plaintiffs' Class Counsel may separately request the Court to award to Plaintiffs' Class Counsel a further reimbursement of their reasonable

documented expenses incurred between the Fairness Hearing and the Effective Date, provided that this amount, when added to the amount awarded pursuant to paragraph 16(ii), above, does not exceed _____. Defendants shall pay this amount, or such smaller amount, awarded by the Court to Plaintiffs' Class Counsel.

19. Defendants and the Released Parties shall not be liable for any additional fees or expenses for Plaintiffs' Class Counsel or counsel of any Plaintiff or Settlement Class Member in connection with the Action or the Non-S.D.N.Y. Actions, beyond those expressly provided in the Settlement Agreement, and paragraphs 15 through 18, above.

20. After the Effective Date, and before receiving any portion of the attorneys' fees specified in paragraph 16, counsel pursuing any of the Non-S.D.N.Y. Actions shall voluntarily discontinue such Non-S.D.N.Y. Actions.

21. By reason of the Settlement, and approval hereof, there is no just reason for delay and this Final Order and Judgment shall be deemed a final judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

22. Jurisdiction is reserved, without affecting the finality of this Final Order and Judgment, over:

(a) Effectuating the Settlement and the terms of the Settlement Agreement, including the payment of Plaintiffs' counsel's attorneys' fees and reimbursement of expenses, including any interest accrued thereon;

(b) Supervising all aspects of the administration of the Settlement, and providing the benefits of the Settlement to Settlement Class Members, including, but not limited to, the resolution of any complaints submitted by Settlement Class Members, and for future allowances of expenses incurred by Plaintiffs' counsel solely in the administration of the Settlement, subject to the limits specified above in Paragraph 16;

(c) Determining whether, in the event an appeal is taken from any aspect of this Final Order and Judgment, notice should be given at the appellant's expense to some or all Settlement Class Members apprising them of the pendency of the appeal and such other matters as the Court may order;

(d) Enforcing and administering the Settlement Agreement and the Settlement including any releases executed in connection therewith, and the provisions of this Final Order and Judgment;

(e) Adjudicating any disputes that arise under the Settlement Agreement; and

(f) Any other matters related or ancillary to the foregoing.

Dated: New York, New York

_____, 2006

SO ORDERED, ADJUDGED AND DECREED

THE HONORABLE NAOMI R. BUCHWALD
UNITED STATES DISTRICT JUDGE

Settlement Agreement -- Exhibit C

ARTIST	GENRE	TITLE 1	Selection	Full Album	TITLE 2	Selection	Full Album
Acceptance	Rock	Phantoms	CK 89016	YES			
Alexander, Jessi	Country	Honeysuckle Sweet	CK 90849	YES			
Amerie	R&B	All I Have	CK 85959	YES	Touch	CK 90763	YES
Amos, Tori	Pop	Scarlet's Walk	EK 86412	YES	The Beekeeper	EK 92800	YES
Anastacia	Dance	Freak of Nature	EK 86010	YES	Not That Kind	EK 69948	YES
Anointed	Gospel	Now is the Time	CK 90929	YES			
Anthony, Marc	Pop	Mended	CK 85300	YES	Marc Anthony	CK 69726	YES
Ataris	Rock	So long, Astoria	CK 86184	YES			
Babyface	R&B	The Essential: Babyface	EK 89172	YES			
Backstreet Boys	Pop	The Hits--Chapter One	01241417792	YES			
Bad Plus	Jazz	Give	CK 90771	YES	Suspicious Activity	CK 94740	YES
Blakey, Art	Jazz	The Jazz Messengers	CK 65265	YES			
Blu Cantrell		Bittersweet	82876527292	YES			
Bolti, Chris	Jazz	To Love Again, The Duets	CK 677505	YES	When I Fall In Love	CK 92872	YES
Bow Wow	Rap	Wanted	CK 93505	YES			
The Calling	Rock	Two	82876566122	YES	Camino Palmero	7863675852	YES
Carpenter, Mary Chapin	Country	Between Here And Gone	CK 86619	YES	The Essential: Mary Chapin Carpenter	CK 90772	YES
Carter, Aaron	Pop	Most Requested Hits	82876555702	YES			
Cash, Roseanne	Country	Interiors	CK 677638	YES	Seven Year Ache	CK 677637	YES
Cassidy	R&B	Split Personality	82876588962	YES			
Cave In		Antenna	07863681312	YES			
Chasez, JC	Pop	Schizophrenic	82876537242	YES			
Citizen Cope		The Clarence Greenwood Recordings	82876521142	YES			
Coe, David Allan	Country	The Essential: David Allan Coe	CK 89073	YES			
Coheed and Cambria	Rock	In Keeping Secrets	CK 92686	YES	Good Apollo	CK 93989	YES
Colvin, Shawn	Pop	Polaroids	CK 93452	YES			
Coral	Rock	The Coral	CK 87192	YES			
Crossfade	Rock	Crossfade	CK 87148	YES			
Crowell, Rodney	Country	The Outsider	CK 94470	YES	Diamonds & Dirt	CK 81612	YES
Cypress Hill	Rap	III (Temples Of Boom) Edited	CK 67433	YES	Live At The Fillmore	CK 85273	YES
Da Brat	Rap	Limelite, Luv & Niteclubz	82876525092	YES			
Dead 60's	Rock	The Dead 60's	EK 677675	YES			
Diamond Rio	Country	Completely	07863670462	YES			
Dimeola, Al	Jazz	The Essence of Al Dimeola	CK 52920	YES			
Dion, Celine	Pop	A New Day... Live In Las Vegas	EK 86400	YES			
Downey Jr, Robert	Pop	The Futurist	SK 92654	YES			
Dr. Hook	Pop	Super Hits	CK 85876	YES	The Essential Dr. Hook & Medicine Show	CK 86813	YES
Earth Wind and Fire	Pop	Greatest Hits	C2K 86661	YES	Spirit (expanded)	CK 65739	YES
Ellington, Duke	Jazz	Piano In The Background	CK 87107	YES	Masterpieces By Ellington	CK 87043	YES
Ellis, Don	Jazz	Electric Bath	CK 65522	YES			
Estefan, Gloria	Pop	Unwrapped	EK 86790	YES	Mi Tierra	EK 53807	
Eve 6		Eve 6	07863676172	YES			
Fatty Koo	R&B	House Of Fatty Koo	CK 91256	YES			
Fishbone	Rock	Truth And Soul	CK 40891	YES	The Essential Fishbone	CK 86361	YES
Flatt & Scruggs	Country	Foggy Mountain Jamboree	CK 677627	YES			
Fleck, Bela	Jazz	Perpetual Motion	SK 89610	YES			
Frankie J	R&B	The One	CK 96432	YES			
Fuel	Rock	Something Like Human	EK 90705	YES			
Full Scale	Rock	Full Scale	CK 93557	YES			
Future Leaders of the World	Rock	LVL IV	EK 89192	YES			
Getz, Stan	Jazz	Jazz Moods: Cool	CK 90690	YES			
Ginuwine	Rap	The Senior	EK 86960	YES			
Good Charlotte	Rock	The Chronicles of Life & Death	EK 92425	YES			
Gordon, Dexter	Jazz	Manhattan Symphonie	CK 677833	YES			
Gray, Macy	R&B	The Very Best Of Macy Gray	EK 92944	YES	Macy Gray On How Life Is	EK 61400	YES
Green, Vivian	R&B	Vivian	CK 677881	YES	A Love Story	CK 86357	YES
Gregory, James	Comedy	It Could Be A Law, I Don't Know! The Funniest Man In	EK 46080	YES			
Griffin, Eddie	Comedy	Message In The Hat	EK 53805	YES			
Griggs, Andy	Country	This I Gotta See	82876596302	YES			
Haggard, Merle	Country	Love Songs	EK 90569	YES	The Essential Merle Haggard: The Epic Years	EK 90568	YES
Hancock, Herbie	Jazz	The Piano	CK 87083	YES			
Heart	Rock	Little Queen	EK 85772	YES	Bebe Le Strange	EK 85770	YES
Incubus	Rock	A Crow Left Of The Murder	EK 90890	YES	Morning View	EK 85227	YES
Indigo Girls	Rock	Indigo Girls	EK 85109	YES	All That We Let In	EK 91003	YES
Indigo Girls	Rock	Rites Of Passage	EK 61576	YES			
Jagged Edge	R&B	Hard	CK 87017	YES	JE Heartbreak	CK 69862	YES
Jennings, Waylon	Country	Highwayman 2	CK 45240	YES			
Jewell, Buddy	Country	Times Like These	CK 677879	YES	Buddy Jewell	CK 90131	YES
Jones, George	Country	Love Songs	EK 87151	YES			
Kings of Leon		Aha Shake Heartbreak	82876645442	YES			
Korn	Rock	Greatest Hits, Vol 1	EK 92700	YES	Issues	EK 62239	YES
Kristopherson, Kris	Country	Kristofferson	JK 85281	YES			
Labelle, Patti	R&B	Love Songs	EK 85290	YES			
Lamb of God	Rock	Ashes Of The Wake	EK 90702	YES			
Lambert, Miranda	Country	Kerosene	EK 92026	YES			
Lauper, Cyndi	Pop	The Body Acoustic	EK 94569	YES			
Leadbelly	Blues	King Of The 12-String Guitar	CK 46776	YES			
Lewis, Ramsey	Jazz	Love Songs	CK 93568	YES			
Lit	Rock	A Place In The Sun	82876681515	YES	Atomic	07863680862	YES
Longwave		There's A Fire	82876670352	YES	The Strangest Things	07863681792	YES
Lopez, Jennifer	Pop	Rebirth	EK 90622	YES			

ARTIST	GENRE	TITLE 1	Selection	Full Album	TITLE 2	Selection	Full Album
Loveless, Patty	Country	On Your Way Home	EK 86620	YES			
Marie, Teena	R&B	Robbery	EK 677629	YES	Super Hits	EK 86344	YES
Marsalis, Wynton	Jazz	Hot House Flowers	CK 39530	YES	Marsalis Plays Monk	CK 67503	YES
Martin, Charlotte	Rock	On Your Shore	82876506762	YES			
Martin, Ricky	Pop	Life	CK 678318	YES	Ricky Martin	CK 69891	YES
Mary Mary	R&B	Mary Mary	CK 677733	YES			
Mathis, Johnny	Pop	Love Songs	CK 87065	YES	Christmas Music: A Personal Collection		
Mathis, Johnny	Pop	Open Fire, Two Guitars	CK 65862	YES	Good Night, Dear Lord	CK 64891	YES
McKay, Nellie	Pop	Get Away From Me	C2K 90940	YES			
Monk, Thelonious	Jazz	The Essential: Thelonious Monk	CK 89175	YES	Jazz Moods: 'Round Midnight	CK 90692	YES
Monroe, Bill	Country	16 Gems	CK 53908	YES			
Montgomery Gentry	Country	You Do Your Thing	CK 80558	YES			
Moore, Mandy	Pop	The Best of Mandy Moore	EK 93458	YES			
Mudvayne	Rock	Lost And Found	EK 90784	YES			
Mulligan, Gerry	Jazz	Jeru	CK 677634	YES			
Nalick, Anna	Pop	Wreck Of The Day	CK 90891	YES			
Nas	Rap	God's Son	CK 86985	YES			
Nine Days	Rock	The Maddening Crowd	BK 63634	YES			
O'jays	R&B	The Essential O'Jays	EK 80632	YES			
Omarion	R&B	O	EK 92818	YES			
Paul, Billy	Pop	Super Hits	EK 86553	YES			
Paycheck, Johnny	Country	Johnny Paycheck - 16 Biggest Hits	EK 69968	YES			
Phillips, Esther	Jazz	Jazz Moods	EK 93641	YES			
Randall, Jon	Country	Walking Among The Living	EK 92083	YES			
Raveonettes	Rock	Chain Gang of Love	CK 90353	YES			
Raye, Colin	Country	16 Biggest Hits	EK 86682	YES			
Rich, Charlie	Country	16 Biggest Hits	EK 69740	YES			
Rockpile	Rock	Seconds Of Pleasure	CK 63983	YES			
Satriani, Joe	Rock	Is There Love In Space?	EK 90832	YES	Strange Beautiful Music	EK 86294	YES
Savage Garden	Pop	Savage Garden	CK 67954	YES			
Scruggs, Earl	Country	I Saw The Light With Some Help From My Friends	CK 92793	YES			
Simon, Carty	Pop	Moonlight Serenade	CK 94890	YES			
Simpson, Jessica	Pop	In This Skin	CK 92005	YES			
Sinatra, Frank	Pop	I've Got A Crush On You	CK 66964	YES	Sinatra Sings His Greatest Hits	CK 65240	YES
Skaggs, Ricky	Country	Live In London	EK 93546	YES			
Stanley Brothers	Country	The Complete Columbia Stanley Brothers	CK 53798	YES			
Sweet, Matthew	pop	Time Capsule: The Best of Matthew Sweet 1990-2000	61422311572	YES			
Switchfoot	Rock	Nothing Is Sound	CK 94581	YES	The Beautiful Letdown	CK 86967	YES
Tatum, Art	Jazz	Piano Starts Here	CK 64690	YES			
Train	Pop	Alive At Last	CK 92830	YES	My Private Nation	CK 86593	YES
Tritt, Travis	Country	My Honky Tonk History	CK 92084	YES	Strong Enough	CK 86660	YES
Tyrell, Steve	Jazz	This Guy's In Love	CK 89238	YES	This Time Of Year	CK 86638	YES
Vandross, Luther	R&B	This Is Christmas	EK 92701	YES	The Ultimate Luther Vandross	EK 85991	YES
Vandross, Luther	R&B	Your Secret Love	EK 67553	YES	The Essential Luther Vandross	E2K 89167	YES
Vaughan, Sarah	Jazz	Love Songs	CK 93570	YES	Sarah Vaughan In High-Fi	CK 65117	YES
Vendetta Red	Rock	Between the Never and the Now	EK 86415	YES			
The Verve Pipe	Pop	Underneath	07863679962	YES			
Watts Jeff Train	Jazz	Citizen Tain	CK 69551	YES			
White, Peter	Jazz	Confidential	CK 89090	YES			
Xscape	Rap	Traces Of My Lipstick	CK 68042	YES	Off The Hook	CK 67022	YES
Yamagata, Rachael		Happenstance	82876505662	YES			
ZZ Top	Rock	Mescalero	82876511682	YES			

Settlement Agreement -- Exhibit D

Rules of Civil Procedure, to determine, *inter alia*: (a) whether the Settlement is fair, reasonable, and adequate, and whether it should be approved pursuant to Rule 23 of the Federal Rules of Civil Procedure; and (b) whether the application of Plaintiffs' counsel for an award of attorneys' fees and reimbursement of expenses should be granted,

IT IS HEREBY ORDERED, that:

1. The Court, for settlement purposes only, hereby conditionally certifies pursuant to Rule 23(a) and Rules 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure, a class consisting of the named Plaintiffs in the Action and all natural persons or entities in the United States who purchased, received, came into possession of or otherwise used one or more MediaMax CDs and/or XCP CDs prior to the Effective Date. Excluded from the Settlement Class are Released Parties; SONY BMG-authorized resellers or distributors of the XCP CDs and MediaMax CDs; current or former employees of Released Parties; and any persons or entities that have previously executed releases discharging Defendants from liability concerning or encompassing any or all claims that are the subject of the Action and the Non-S.D.N.Y. Actions.¹

2. The Court finds, with respect to the non-injunctive portions of the Settlement Agreement (*i.e.*, all those except the provisions in Section IV) that: (a) the number of Settlement Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of the named representatives are typical of the claims of the Settlement Class they seek to represent; (d) the Plaintiffs will fairly and adequately represent the interests of the Settlement Class; (e) the questions of law and fact common to the Settlement Class predominate over any questions

¹ All capitalized terms in this Order shall have the same meaning as defined in the Settlement Agreement dated December 27, 2005.

affecting only individual members of the Settlement Class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

3. The Court finds, with respect to the injunctive portions of the Settlement Agreement specified in Section IV, that: (a) the number of Settlement Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of the named representatives are typical of the claims of the Settlement Class they seek to represent; (d) the Plaintiffs will fairly and adequately represent the interests of the Settlement Class; and (e) the Defendants allegedly have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole, if the Settlement Agreement receives final approval.

4. Edwin Bonner, Ori Edelstein, Joseph Halpin, Robert Hull, Andrew Klewan, John Maletta, James Michaelson, Jeffrey Potter, Tom Ricciuti, Yvonne Ricciuti, Dora Rivas, Mary Schumacher, and James Springer are appointed representatives of the Settlement Class.

5. After considering the factors described in Rule 23(g)(1) of the Federal Rules of Civil Procedure, the Court appoints Girard Gibbs & DeBartolomeo LLP and Kamber & Associates, LLC Class Counsel for the Settlement Class.

6. The Court finds that the Settlement as set forth in the Settlement Agreement falls within the range of reasonableness and warrants providing notice of such Settlement to the members of the Settlement Class and, accordingly, the Court, pursuant to Rules 23(c) and 23(e) of the Federal Rules of Civil Procedure, preliminarily approves the Settlement upon the terms and conditions set forth in the Settlement Agreement.

7. The Court sets a hearing to take place on _____, 2006, at _____ m., before this Court, at the Daniel Patrick Moynihan United States Courthouse for the Southern District of

New York, 500 Pearl Street, Room 2270, New York, New York, to hear all interested parties on whether: (i) the requirements for certification of the Settlement Class have been met; (ii) the proposed settlement of the Action in accordance with the terms set forth in the Settlement Agreement, including as part of the settlement the payment of Plaintiffs' Class Counsel's attorneys' fees and reimbursement of Plaintiffs' Class Counsel's expenses, should be approved as fair, reasonable and adequate; and (iii) the Judgment approving the settlement and dismissing the Action on the merits and with prejudice against Plaintiffs and Settlement Class Members should be entered (the "Fairness Hearing"). The Court may adjourn the Fairness Hearing without further notice to the members of the Settlement Class (except those Settlement Class Members who file timely and valid objections).

8. The Court approves the form of the Notice of Pendency and Settlement of Class Action (the "Full Settlement Notice"), substantially in the form of Exhibit F annexed to the Settlement Agreement, which contains instructions for Settlement Class Members to obtain the settlement benefits referenced in the Settlement Agreement, and approves the summary form of that Settlement Notice, substantially in the form of Exhibit G, annexed to the Settlement Agreement.

9. Non-substantive changes may be made to the Full Settlement Notice and Summary Settlement Notice by agreement of the Parties, without further order of this Court.

10. The Court directs that the Settlement Class be given notice of the proposed Settlement as follows:

(a) SONY BMG, on or before _____, shall cause the Full Settlement Notice to be sent by electronic mail ("e-mail") to all Settlement Class Members whose e-mail addresses SONY BMG possesses;

(b) SONY BMG, on or before _____, shall post the Full Settlement Notice on its website. The Full Settlement Notice will remain posted to this website until the date of the Fairness Hearing or until this Settlement Agreement is terminated by its terms.

(c) When a user inserts certain XCP CDs or MediaMax CDs into a computer with an active connection to the Internet, the computer queries SONY BMG's website for content, hereafter referred to as the "Banner," specific to the artist whose work appears on the XCP CD or MediaMax CD. SONY BMG will ensure that, on or before _____, the Banner of XCP CDs and MediaMax CDs so equipped will, in addition to its regular artist-specific content, display a clear and conspicuous link to the Full Settlement Notice.

(d) SONY BMG shall work with (and, if necessary, compensate) Google and other search engine firms to ensure that a link to the Full Settlement Notice is displayed prominently when users of those search engines search for words such as "XCP," "MediaMax" and "SONY BMG Settlement."

(e) SONY BMG shall cause the Summary Settlement Notice to be published, on or before _____ in (i) the *USA Today* newspaper, or another, similar publication of national circulation; (ii) *People* magazine, or another, similar publication of national circulation; (iii) *Rolling Stone* and *Spin* magazines; (iv) the *Los Angeles Times*, (v) the *New York Daily News*; (vi) the *New York Post*; (vii) the *Chicago Tribune* and (viii) the *Atlanta-Journal Constitution*. With respect to the daily publications listed above, the advertisements containing the Summary Settlement Notice shall be published on any single Monday, Tuesday, Wednesday or Thursday, and shall not be required to be more than an eighth-page in size.

(f) Plaintiffs' Class Counsel may continuously post the Summary Notice and the Full Settlement Notice on their firm websites, beginning two (2) business days prior to _____, and ending on the date of the Fairness Hearing.

Plaintiffs' Class Counsel will, additionally, cause the joint press release described in Section XI.F. of the Settlement Agreement, which will contain the information included in the Summary Settlement Notice, to be issued over PR Newswire, or another similar national business wire service, on any one date on or after the date two (2) business days prior to the date set forth in the Hearing Order for transmission of the Full Settlement Notice and publication of the Summary Settlement Notice.

11. The Court directs that Defendants and Class Counsel, as applicable, shall promptly respond to all requests for copies of the Full Settlement Notice and printed Claim Form by sending the documents via U.S. mail or e-mail to any Settlement Class Members who shall make such requests.

12. The Court finds that such notice to the members of the Settlement Class as described above: (a) is the best notice practicable to members of the Settlement Class; (b) is reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the Action, conditional certification of the Settlement Class, the proposed Settlement, and the rights of members of the Settlement Class to object to the Settlement; to request exclusion from the Settlement Class; and the application of Plaintiffs' counsel for an award of attorneys' fees and reimbursement of expenses; (c) is reasonable and constitutes due, adequate and sufficient notice to all persons and entities entitled to receive notice; and (d) meets all applicable requirements of law including, but not limited to, Rule 23(c) of the Federal Rules of Civil Procedure and the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

13. The Court directs Class Counsel and Defendant's counsel, on or before _____, to file with the Court evidence that the provisions of paragraphs 9 and 10 of this Order have been satisfied.

14. The Court directs that any person or entity who is a member of the Settlement Class and who wishes to exclude himself, herself, itself, or themselves from the Settlement Class shall, in writing, by letter postmarked on or before _____, submit a request for exclusion that sets forth: (a) such person's or entity's name and address, or the name and address of the person or entity for which he, she or it is acting; (b) the CD title (including artist and album name) he, she, it, or they claims to have received, came into possession of or otherwise used; and (c) a clear and unambiguous statement that such person or entity wishes to be excluded from the Settlement Class. Any person or entity who fails to timely and/or properly seek exclusion from the Settlement Class as provided herein, shall be deemed members of the Settlement Class for all purposes and shall be henceforth bound by all orders and/or judgments of this Court;

15. Any person or entity who does not timely and/or properly seek exclusion from the Settlement Class may, solely at the expense of such person or entity, be heard personally or through counsel retained by such person or entity solely at the cost of such person or entity, on: (a) whether the Settlement is fair, reasonable, and adequate to Settlement Class members and whether the proposed Settlement should or should not be approved by the Court; and/or (b) the application of Class Counsel in the Actions for an award of attorneys' fees and/or reimbursement of expense should or should not be granted, provided, however, that such person or entity, on or before _____: (i) has filed with the Clerk of the Court a notice of intention of such person or entity to appear, personally or, if such person or entity intends to appear by counsel, such counsel has filed a Notice of Appearance, with a written statement that

describes in full the basis for any opposition of such person or entity to any or all of the applications before the Court at the Fairness Hearing and attaching all supporting documentation and a list of any and all witnesses or experts, if any, whom such person or entity shall present to this Court; and (ii) has on or before _____, served copies of such notice(s), statement(s), documentation and list(s) together with any other papers or brief(s) that such person or entity files with the Court or wishes the Court to consider, upon the following counsel of record in the Action: Daniel C. Girard, Girard Gibbs & De Bartolomeo LLP, 601 California Street, Suite 1400, San Francisco, California 94108, Class Counsel; Jeffrey S. Jacobson, Esq., Debevoise & Plimpton LLP, 919 Third Avenue, New York, New York 10022, counsel for SONY BMG; Leonard T. Nuara, Esq., Thacher, Proffitt & Wood LLP, 25 DeForest Avenue, Summit, NJ 07901, counsel for F4I; and Andrew C. Devore, Esq., Manatt, Phelps & Phillips, L.L.P., 7 Times Square, New York, New York 10036, counsel for SunnComm.

16. The Parties shall, by _____, file and serve all papers in support of the application for final approval of the Settlement, including the provision for payment of attorneys' fees and reimbursement of expenses.

17. The Parties shall, by _____, file and serve all papers in response to any valid and timely objections received by the designated counsel for the Parties identified in the Full Settlement Notice.

18. The Court directs that the deadline for Settlement Class Members to complete (and, where applicable, return) Claim Forms to Defendant shall be December 31, 2006, unless such deadline is extended by further Order of this Court without further notice. Any member of the Settlement Class who fails to submit a valid and properly completed Proof of Claim in the form set forth therein, dated or postmarked on or before December 31, 2006, unless such

deadline date is extended, shall be barred from any recovery from that portion of the Settlement for which the submission of a valid Proof of Claim form is required.

19. Pursuant to the Settlement Agreement, if, for any reason, the notice to Settlement Class Members specified above is not or cannot be provided before February 1, 2006, the Parties will confer in good faith and recommend to the Court that the date by which any Settlement Class Member must seek to receive one or more of the Settlement Benefits (specified above in paragraph 14) be extended correspondingly.

20. If the Settlement Benefits available to Settlement Class Members change, including by operation of Section III(V) or IV(A) of the Settlement Agreement, no new notice need issue to Settlement Class Members.

21. Defendants shall, on or before _____, prepare and provide the notices required by the Class Action Fairness Act of 2005, Pub. L. 109-2 (2005), including, but not limited to, the notices to the United States Department of Justice and to the Attorneys General of all states in which Settlement Class members reside, as specified in 28 U.S.C. § 1715. Plaintiffs' Class Counsel shall cooperate in the drafting of such notices and shall provide Defendants with any and all information in their possession necessary for the preparation of these notices.

22. As provided in Section IX. of the Settlement Agreement, SONY BMG shall pay all costs associated with providing notice to the members of the Settlement Class as directed herein, including, but not limited to, publication of the Full Settlement Notice, Summary Settlement Notice, and Claim Forms; postage and handling charges for providing copies of the Full Settlement Notice to potential members of the Settlement Class (as applicable), and for e-mail transmission of the Full Settlement Notice (as applicable); for publication as provided herein of the Summary Notice; and for any necessary costs of administration of the Settlement

that are incurred prior to the Effective Date of the Settlement (as defined in paragraph II.B. of the Settlement Agreement). In the event that this Settlement Agreement does not become final or the Effective Date does not occur for any reason, other than a breach by Plaintiffs or Plaintiffs' Class Counsel of one or more provisions of this Settlement Agreement, Plaintiffs shall have no obligation to reimburse Defendants for any costs or expenses paid, incurred or obligated for notice of this Settlement to the Settlement Class.

23. As provided in Section III.S. of the Settlement Agreement, between the Preliminary Approval Date and _____, SONY BMG will cause an independent third party to investigate whether SONY BMG has collected, aggregated or retained Personal Data in a manner inconsistent with the Settlement Agreement, and SONY BMG will provide the third party's conclusions to Plaintiffs' Class Counsel and to the Court prior to the Fairness Hearing, and shall post the third party's conclusions on its website no more than thirty (30) days after receiving those conclusions.

24. Plaintiffs and all members of the Settlement Class and any other person, representative, or entity acting on behalf of any members of the Settlement Class are, until the Fairness Hearing, barred and enjoined from: (i) filing, commencing, prosecuting, maintaining, or intervening in (as members of a class action or otherwise), any claim, lawsuit, arbitration, administrative, regulatory or other proceeding arising out of the Released Claims against any of the Released Parties; and (ii) organizing or soliciting the participation of any members of the Settlement Class into a separate class for purposes of pursuing as a purported class action (including by seeking to amend a pending complaint to include class allegations, or by seeking class certification in a pending action) any claim, lawsuit or other proceeding arising out of the Released Claims against any of the Released Parties. The Court finds that issuance of this

preliminary injunction is necessary and appropriate in aid of the Court's jurisdiction over the action and to protect and effectuate the Court's review of the Settlement.

25. If for any reason, the Effective Date of the Settlement does not occur, this Order shall become null and void, and shall be without prejudice to the rights of the parties, all of whom shall be restored to their respective positions as of December 22, 2005, except that any extensions of time granted since that date by one Party to the other shall continue to have force and effect, and neither Party shall seek an order of default against any other Party for actions not taken while approval of the Settlement was pending, and the Settlement and Settlement Agreement shall become null and void and be of no further force and effect, and neither the Settlement Agreement nor the Court's orders issued in connection with consideration of the Settlement, including this Order, shall be used or referred to in any litigation for any purpose whatsoever, except as required to enforce those provisions of the Settlement Agreement which survive a failure of the Settlement to be consummated or the Effective Date of the Settlement to occur including, without limitation, paragraphs IX.A., IX.B., XI.C., XI.D., XI.K., and XI.L. of the Settlement Agreement.

26. Nothing in this Order shall be construed or used as an admission, concession, or declaration by or against SONY BMG for any fault, wrongdoing, breach or liability. Nor shall this Order be construed or used as an admission, concession, or declaration by or against Plaintiffs or the members of the Settlement Class that their claims lack merit or that the relief requested in the operative Complaint in this Action is inappropriate, improper, or unavailable, or as a waiver by any party of any defenses or claims he, she, or it may have; nor shall this Order be construed as a finding or conclusion of the Court with respect to the merit or lack of merit of any claim asserted in the Action or the defense to any Claim asserted in this Action.

27. The Court retains exclusive jurisdiction over the Action to consider all further matters arising out of or connected with the Settlement.

Dated: New York, New York

January __, 2006

SO ORDERED, ADJUDGED AND DECREED

THE HONORABLE NAOMI R. BUCHWALD
UNITED STATES DISTRICT JUDGE

Settlement Agreement -- Exhibit E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

SONY BMG CD
TECHNOLOGIES LITIGATION

Case No. 1:05-cv-09575-NRB

**SUMMARY NOTICE OF PROPOSED
CLASS ACTION SETTLEMENT**

If you bought, received or used a SONY BMG Music Entertainment CD containing either XCP or MediaMax content protection software, your rights may be affected by a class action settlement.

What is this about?

A settlement has been proposed in a lawsuit brought against SONY BMG Music Entertainment, Inc., SunnCom International Inc., and First 4 Internet, Ltd. ("Defendants"). The lawsuit, In re SONY BMG CD Technologies Litigation, Case No. 1:05-cv-09575-NRB, is pending in the United States District Court for the Southern District of New York and relates to XCP and MediaMax content protection software installed on certain SONY BMG music CDs.

The settlement resolves claims that the Defendants manufactured and sold CDs containing XCP and MediaMax software without adequately disclosing the limitations the software imposes on the use of the CDs and the security vulnerabilities it creates. The Defendants have denied that they did anything wrong.

Who Is Included, And What Does The Settlement Provide?

The settlement provides relief for persons who bought, received or used SONY BMG CDs with either XCP or MediaMax software. Under the settlement, any person in possession of an XCP CD can exchange it for a replacement CD, an MP3 download of the same album, and either (a) cash payment of \$7.50 and one (1) free album download from a list of 200 albums, or (b) three (3) free album downloads from that list. Purchasers of CDs containing MediaMax 5.0 software will receive a free MP3 download of the same album and one (1) additional free album download. Purchasers of CDs containing MediaMax 3.0 software will receive a free MP3 download of the same album.

The settlement also requires the Defendants to stop manufacturing SONY BMG CDs with XCP or MediaMax 3.0 and 5.0 software and, until 2008: (1) make available updates to fix all known security vulnerabilities caused by XCP and MediaMax software; (2) provide software programs to uninstall XCP and MediaMax software safely; (3) fix any future security vulnerabilities discovered in MediaMax and any other content protection software placed on SONY BMG CDs;

(4) provide independent verification that personal information about users of SONY BMG CDs has not and will not be collected through XCP or MediaMax; (5) waive certain provisions of the end user license agreements for XCP and MediaMax software; and (6) ensure that any other content protection software will be clearly disclosed, independently tested and readily uninstalled.

At ___:___m. on _____, 2006, the Court will hold a hearing at the United States District Court, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, Courtroom 21A, New York, New York 10007-1312, to decide whether to approve the settlement and the class attorneys' fees and costs.

How Do I Participate In The Settlement?

If you bought or received a SONY BMG Music CD containing XCP or MediaMax software and want to receive the relief you may be eligible for under the settlement, you must submit an online claim form at www._____.com, or mail a claim form to:

SONY BMG CD Technologies Litigation Exclusions
c/o _____, Claims Administrator
P.O. Box _____
City, ST _____ - _____

All claim forms must be submitted by **December 31, 2006**.

What Are My Other Options?

If you bought, received or used a SONY BMG Music CD containing XCP or MediaMax software, and you do not want to be legally bound by the settlement or receive a replacement CD, cash, free downloads or other relief, you must exclude yourself by _____, 2006. If you do not exclude yourself, certain of your claims against the Defendants that were or could have been asserted in the lawsuit will be released, meaning you may not be able to sue the Defendants for those claims.

To view the detailed legal Notice of Proposed Class Action Settlement, Motion for Attorneys' Fees and Settlement Fairness Hearing, visit www._____.com. You may obtain further information by contacting the claims administrator at the address above or by calling toll free (800) ____-____.

Settlement Agreement -- Exhibit F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

SONY BMG CD
TECHNOLOGIES LITIGATION

Case No. 1:05-cv-09575-NRB

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT, MOTION FOR
ATTORNEYS' FEES AND SETTLEMENT FAIRNESS HEARING**

TO: ALL PEOPLE WHO BOUGHT, RECEIVED OR USED A SONY BMG MUSIC
ENTERTAINMENT COMPACT DISC WITH CONTENT PROTECTION
SOFTWARE

**If you bought, received or used a Sony BMG Music Entertainment
compact disc containing either XCP or MediaMax content protection
software, your rights may be affected by a class action settlement.**

A federal court authorized this notice. This is not a solicitation from a lawyer.

- If you bought or have a SONY BMG CD with XCP content protection software, you are eligible to receive among the following benefits: a replacement CD, a cash payment of \$7.50, free downloads of the music on the CD, up to three (3) additional free album downloads, and software fixes for known security vulnerabilities.
- If you bought or have a SONY BMG CD with MediaMax content protection software, you are eligible (depending upon the version of MediaMax on your CD) to receive among the following benefits: free downloads of the music on the CD, another free album download, and software fixes for known security vulnerabilities.
- This settlement requires the Defendants to update their content protection software on SONY BMG CDs for security vulnerabilities discovered in the future. The Defendants also will ensure that, until 2008, any content protection software will be fully and accurately disclosed, independently tested, and readily uninstalled.
- The settlement resolves class action lawsuits concerning SONY BMG music CDs that contain either XCP or MediaMax content protection software. Content protection software restricts the transfer of music to the hard drive of a personal computer and limits number of copies a user can burn onto a blank CD. The software also prevents the user from saving the audio files in unprotected formats. The plaintiffs allege that the software can send and receive information between the user's computer and the Defendants, can install hidden files on the user's computer, cannot be easily uninstalled, is subject to an

overly restrictive license agreement, and may expose the user's computer to malicious software programs like viruses, Trojan Horses and spyware.

- The settlement resolves claims that the Defendants engaged in deceptive conduct in designing, manufacturing and selling CDs with either XCP or MediaMax content protection software and without adequately disclosing the limitations the software imposes on the use of the CDs and the security vulnerabilities the software creates.
- Your legal rights are affected whether you act, or don't act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
SUBMIT A CLAIM FORM	The only way to qualify for settlement benefits.
EXCLUDE YOURSELF	Get no settlement benefits. This is the only option that allows you to ever be part of any other lawsuit against the Defendants about the legal claims being resolved in this case. <u>See Question 13 below.</u>
OBJECT	Write to the Court about why you don't like the settlement.
GO TO A HEARING	Ask to speak in Court about the fairness of the settlement.
DO NOTHING	Get no settlement benefits. Give up certain rights. You will retain the right to sue the Defendants for any consequential damage to your computer or network that may have resulted from interactions between XCP or MediaMax software and other software or hardware installed on your computer or network.

- These rights and options - **and the deadlines to exercise them** - are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the settlement. Settlement benefits will be provided to Settlement Class Members if the Court approves the settlement and after appeals are resolved. Please be patient.

WHAT THIS NOTICE CONTAINS

<< Table of Contents will generate here >>

BASIC INFORMATION

1. Why did I get this notice package?

You or someone in your family may have bought, received or used a SONY BMG CD with XCP software ("XCP CD") or MediaMax software ("MediaMax CD"). You can find lists of the XCP CDs and MediaMax CDs in Exhibits 1, 2 and 3 at the end of this notice.

The Court directed that this notice be sent to you because you have a right to know about a proposed settlement of a class action lawsuit and about all of your options, before the Court decides whether to approve the settlement. If the Court approves the settlement, and after any objections and appeals are resolved, an administrator appointed by the Court will provide the settlement benefits that the settlement allows.

This package explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is the United States District Court for the Southern District of New York, and the case is known as *In re SONY BMG CD Technologies Litigation*, Case No. 1:05-cv-09575-NRB. United States District Judge Naomi Reice Buchwald is in charge of this case. The people who sued are called Plaintiffs, and the companies they sued, SONY BMG Music Entertainment, Inc., First 4 Internet Ltd., and SunnComm International, Inc., are called the Defendants.

2. What is this lawsuit about?

The lawsuit involves the Defendants' use of content protection software installed on SONY BMG music CDs. Content protection software limits the number of copies of those CDs that a consumer can make. The lawsuit claims that the Defendants designed, manufactured and sold CDs with two types of content protection software, XCP and MediaMax, both of which restrict the use of audio files contained on those CDs. The lawsuit alleges that the Defendants did not give adequate disclosures about XCP and MediaMax software on the CD cases and in the license agreements that appear when the software installs. The lawsuit also claims that XCP and MediaMax software expose computers to security vulnerabilities. Defendants deny they did anything wrong.

3. Why is this a class action?

In a class action, one or more people called Class Representatives (in this case Plaintiffs Edwin Bonner, Ori Edelstein, Joseph Halpin, Robert Hull, Andrew Klewan, John Maletta, James Michaelson, Jeffrey Potter, Tom Ricciuti, Yvonne Ricciuti, Dora Rivas, Mary Schumacher and James Springer), sue on behalf of people who have similar claims. All these people are a Class

or Class Members. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class.

4. Why is there a settlement?

The Court did not decide in favor of the Plaintiffs or the Defendants. Instead, both sides agreed to a settlement. That way, they avoid the risks, delay and cost of a trial, and the people affected will get compensation and other benefits as soon as possible. The Class Representatives and the attorneys think the settlement is best for everyone who bought, received or used XCP CDs or MediaMax CDs.

WHO IS IN THE SETTLEMENT

To see if you will get benefits from this settlement, you first have to decide if you are a Settlement Class Member.

5. How do I know if I am part of the settlement?

The Court directed, for purposes of this settlement, that everyone who fits the following description is a Settlement Class Member: The named Plaintiffs in the Action and all natural persons or entities in the United States who purchased, received, came into possession of or otherwise used one or more MediaMax CDs and/or XCP CDs prior to the date on which the Judgment in this Action becomes Final.

6. Are there exceptions to being included?

You are not a Settlement Class Member if you are any of the Defendants, and all of their and its direct and indirect parent companies, including, but not limited to, Sony Corporation and Bertelsmann AG, and all of their respective divisions and direct and indirect subsidiaries, affiliates, partners, joint ventures, predecessors and successor corporations and business entities, and all of their past and present officers, directors, servants, sureties, attorneys, employees, controlling or principal shareholders, general or limited partners or partnerships, divisions, insurers, designated management companies, and all of their successors or predecessors in interest, assigns, or legal representatives, and any persons or entities that have manufactured, supplied, advertised, marketed distributed or sold MediaMax Software, XCP Software, MediaMax CDs and/or XCP CDs. Also excluded from the Settlement Class are SONY BMG-authorized resellers or distributors of the XCP CDs and MediaMax CDs; current or former employees of Defendants; and any persons or entities that have previously executed releases discharging Defendants from liability concerning or encompassing any or all claims that are the subject of the Actions.

7. I'm still not sure if I am included?

If you are still not sure whether you are included, you can ask for free help. You can call (800) _____ or visit **www. _____ .com** for more information. Or you can fill out and return the claim form described on page [], in question [], to see if you qualify.

THE SETTLEMENT BENEFITS — WHAT YOU GET

8. What does the settlement provide?

If you have a SONY BMG CD with XCP software (listed in Exhibit 1 to this notice), you can participate in the XCP Exchange Program. You can exchange each XCP CD that you have for a replacement CD and a MP3 download of the same album. Neither the replacement CD or the MP3 will contain content protection software. You can find a list of the XCP CDs in Exhibit 1 to this notice. You can exchange your XCP CDs at participating retail stores or by sending your XCP CDs to SONY BMG at no charge.

For each XCP CD you exchange, you are also entitled to one of the following two incentives:

Incentive #1: A payment of \$7.50 (in the form of a check or debit card), and one (1) free album download from the list of albums in Exhibit 4 to this notice.

or

Incentive #2: Three (3) free album downloads from the list of albums in Exhibit 4 to this notice.

If you bought a SONY BMG CD with MediaMax 5.0 software (listed in Exhibit 2 to this notice), the following settlement benefits are available. For each CD with MediaMax 5.0 that you bought, you are entitled to receive a free MP3 download of the same album. This download will not be content protected. In addition, you are entitled to one (1) free album download from the list of albums in Exhibit 4 to this notice.

If you bought a SONY BMG CD with MediaMax 3.0 software (listed in Exhibit 3 to this notice), the following settlement benefits are available. For each CD with MediaMax 3.0 that you bought, you are entitled to receive a free MP3 download of the same album without any content protection.

The following benefits are available to everyone who bought, owned or used an XCP CD or MediaMax CD:

XCP and MediaMax Updates. Updates that fix all known security vulnerabilities are available. An independent security expert has verified the security and effectiveness of the updates. You can get the XCP update at www.xxxx.com/xcpupdate and the MediaMax update at www.xxxx.com/Medimaxupdate.

XCP and MediaMax Uninstallers. Software programs that uninstall XCP and MediaMax in one step are available. An independent security expert has verified the security and effectiveness of the uninstallers. You can get the XCP uninstaller at www.xxxx.com/xcpuninstaller and the MediaMax uninstaller at www.xxxx.com/Mediamaxuninstaller.

Manufacturing of Content Protection Software. The Defendants will not manufacture more CDs with XCP software or MediaMax 3.0 or 5.0 software and will not distribute any more XCP CDs.

Fixes For Security Vulnerabilities. The Defendants will fix security vulnerabilities discovered in MediaMax and any other content protection software placed on SONY BMG CDs. The fixes will be provided through software updates and will be verified as secure by a computer security expert.

Collection of Personal Information. A third party will verify that: (1) the Defendants have not collected and will not collect any personal information about users of XCP CDs or MediaMax CDs through the software, other than artist, album title, and the user's IP address; (2) the Defendants will not retain the information collected for more than ten (10) days; and (3) the Defendants will not use the software to collect other information about users without their express consent.

Waiver of Specific Provisions of the Licensing Agreement. The Defendants will waive certain provisions in their end user license agreements for XCP software and MediaMax 3.0 and 5.0 software. A list of the specific provisions that the Defendants will waive appears in Exhibit 5 to this notice.

Future SONY BMG Content Protection Software. If SONY BMG manufactures any CDs with content protection software before 2008, SONY BMG will ensure that:

- The CDs include labels that adequately describe the nature and function of the software;
- The software only installs with the consumer's express consent;
- A program to uninstall the software is readily available to consumers;
- Updates and relevant changes in how the software operates are meaningfully disclosed to consumers;
- An independent third party reviews the license agreement for the software, and the license describes what the software does in understandable terms;

- An independent computer security expert verifies that the software is secure;
- The software does not provide any more information to SONY BMG's Internet servers than is necessary to make the enhanced content on the CDs work, unless the user authorizes SONY BMG to do otherwise;
- If the software is discovered to have security vulnerabilities, it will be fixed with an update, or other appropriate steps will be taken.

9. What can I get from the settlement?

The Defendants' changes in practices and procedures described in Section 8 will benefit all Settlement Class Members. Section 8 describes the additional benefits you can get if you have an XCP CD or a MediaMax CD.

HOW YOU GET SETTLEMENT BENEFITS — SUBMITTING A CLAIM FORM

10. How can I get a replacement CD, album downloads or other settlement benefits?

The XCP Update, XCP Uninstaller, MediaMax Update and MediaMax Uninstaller are and will be available for download at SONY BMG's website: [www. _____ .com](http://www.sony.com).

Do you have a SONY BMG CD with XCP software?

To participate in the XCP Exchange Program and obtain replacement CDs and Incentive #1 or Incentive #2, you must send the CD back to SONY BMG (at SONY BMG's expense), or return the CD to the place of purchase and send a receipt showing the return to SONY BMG. A Proof of Claim form and the instructions for sending CDs back to SONY BMG are being circulated with this notice. You may also get a Proof of Claim form on the Internet at [www. _____ .com](http://www.sony.com) (the "Website"). Read the instructions carefully, fill out the form, and follow the instructions no later than December 31, 2006.

Do you have a SONY BMG CD with MediaMax?

To receive the MediaMax compensation, you must send in a Proof of Claim form with either proof of purchase of the MediaMax CD, or with the MediaMax CD. A Proof of Claim form is being circulated with this notice. You may also get a Proof of Claim form at the Website. Read the instructions carefully, fill out the form, and submit it electronically through the Website or by U.S. Mail no later than December 31, 2006.

11. When would I get my settlement benefits?

Defendants are making these settlement benefits available now. For example, you may download the XCP Update, XCP Uninstaller, MediaMax Update and MediaMax Uninstaller at SONY BMG's website: www.sony.com now. You will receive the other benefits within six to eight weeks after you submit the proof of claim form and all required proof.

12. What am I giving up in the settlement?

If the settlement is approved, you will release all "Released Claims" (as defined below) against the "Released Parties" (as defined below).

"Released Claims" means any and all claims, rights, damages, losses, demands, obligations, actions, causes of action, suits, cross-claims, matters, issues, debts, liens, contracts, liabilities, agreements, costs, or expenses, of any nature whatsoever, ascertained or unascertained, suspected or unsuspected, existing or claimed to exist, including Unknown Claims, of any and all Plaintiffs and/or Settlement Class Members arising out of any purchase or use by them of an XCP CD or a MediaMax CD, the XCP Update (as defined below), the XCP Uninstaller (as defined below), the MediaMax Update (as defined below), or the MediaMax Uninstaller (as defined below) or any installation or de-installation of XCP Software or MediaMax Software at any time, to the extent that such claims: (a) arise out of the Action or the Non-S.D.N.Y. Actions; (b) relate to any allegations that either were or could have been asserted in the Action or the Non-S.D.N.Y. Actions; or (c) which might in the future be asserted by any Plaintiff or Settlement Class Member, against any of the Released Parties that would arise out of, or relate to in any manner, directly or indirectly, any acts, facts, transactions, occurrences, conduct, representations or omissions alleged in the Action and the Non-S.D.N.Y. Actions, including, without limitation, claims respecting any disclosure, advertising or other descriptions of, or claims relating to (i) the nature, quality, value, and/or functionality of the MediaMax CDs, the XCP CDs, the MediaMax Software, MediaMax Update, MediaMax Uninstaller, XCP Software, XCP Update or XCP Uninstaller; and/or (ii) the EULAs, and/or (iii) the alleged collection by Defendants of Personal Data or IP addresses. Released Claims also include claims for abuse of process, malicious prosecution or any other claim arising out of, relating to, or in connection with the defense or resolution of the Action. For avoidance of doubt, Released Claims include claims relating to (i) the asserted costs of removing XCP Software and/or MediaMax Software from a computer or network and (ii) damages caused by negligent removal of XCP Software and/or MediaMax Software. The sole exception to the definition of Released Claims is that such claims do not include claims for consequential damage to a computer or network that may or are alleged to have resulted from interactions between the XCP Software or the MediaMax Software and other software or hardware installed on such computer or network. (For avoidance of doubt, Released Claims also do not include unalleged copyright, trademark or other claims concerning the ownership of intellectual property rights in the MediaMax Software or the XCP Software, or any uninstallers or updates thereto.)

“Released Parties” means each and all of the Defendants and each and all of Defendants’ direct and indirect parent companies including, in the case of SONY BMG and without limitation, Sony Corporation and Bertelsmann AG, and each and all of each of Sony Corporation’s, Bertelsmann AG’s and Defendants’ respective divisions and direct and indirect subsidiaries, affiliates, partners, joint ventures, predecessors and successor corporations and business entities, and each and all of their past and present officers, directors, servants, licensees, joint ventures, sureties, attorneys, agents, consultants, advisors, contractors, employees, controlling or principal shareholders, general or limited partners or partnerships, divisions, insurers, designated management companies, and each and all of their successors or predecessors in interest, assigns, or legal representatives, and any persons or entities that have designed, developed, programmed, manufactured, supplied, advertised, marketed, distributed or sold MediaMax CDs and/or XCP CDs or software thereon.

If you bought, received or used an XCP CD or a MediaMax CD, you will be a member of the Settlement Class, unless you exclude yourself. All of the Court’s orders will apply to you and legally bind you.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don’t want to participate in the settlement and get the settlement benefits described in Section 8, but you want to keep the right to sue or continue to sue the Defendants on your own about any of the claims that this settlement resolves, then you must take steps to get out. This is called excluding yourself — or is sometimes referred to as “opting out” of the Settlement Class.

13. How do I get out of the settlement?

If you want to exclude yourself from the settlement, you must send a letter by mail clearly indicating your name, address and telephone number and stating that you “request to be excluded from the Settlement Class in the SONY BMG CD Technologies Litigation,” and you must sign the letter. You also must state the title of the XCP CD or MediaMax CD that you bought, received or used. Lists of XCP CDs and MediaMax CDs appear in Exhibits 1 and 2 to this Notice.

You must mail your exclusion request postmarked no later than _____, 2006 to:

SONY BMG CD Technologies Litigation Exclusions
c/o _____, Claims Administrator
P.O. Box _____
City, ST _____

You can’t exclude yourself on the phone or by e-mail. If you exclude yourself from the Settlement Class, you will not get any of the settlement benefits described in Section 8, and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue (or continue to sue) the Defendants in the future for the claims for consequential damage to a computer or network that may or are alleged to have resulted from

interactions between the XCP Software or the MediaMax Software and other software or hardware installed on such computer or network.

14. If I don't exclude myself, can I sue the Defendants for the same thing later?

No. Unless you exclude yourself, you give up any rights to sue the Defendants and the Released Parties for the claims that this settlement resolves. If you have a pending lawsuit bringing claims that this settlement resolves, speak to your lawyer in that case immediately. You must exclude yourself from *this* Settlement Class to continue your own lawsuit. Remember, the exclusion deadline is _____, 2006.

15. If I exclude myself, can I get benefits from this settlement?

No. If you exclude yourself, do not send in a claim form to ask for any of the settlement benefits described in Section 8. But, you may sue, continue to sue, or be part of a different lawsuit bringing claims that this settlement resolves against the Released Parties. Note: If you elect to receive any of the Settlement Benefits, you cannot also opt out.

THE LAWYERS REPRESENTING YOU

16. Do I have a lawyer in this case?

The Court ordered that the following lead counsel and their law firms will represent you and the other Settlement Class Members: Daniel C. Girard, Esq., Girard Gibbs De Bartolomeo, LLP, 601 California Street, Suite 1400, San Francisco, CA 94108, Telephone (415) 981-4800; and Scott A. Kamber, Kamber & Associates, LLC, 19 Fulton Street, Suite 400, New York, NY 10038, Telephone (212) 571-2000. These lawyers are called Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

17. How will the lawyers be paid?

Class Counsel and the Defendants have not agreed on the amount of attorneys' fees and expenses that Plaintiffs' counsel may request, or whether Defendants may object to Plaintiffs' counsel's ultimate request. The parties may reach agreement on these points in the future, or the Court may decide the issue. No matter how these issues are resolved, however, the amount of fees and expenses awarded to Plaintiffs' counsel will not affect in any way the Settlement Benefits to which you are entitled.

Class Counsel are moving the Court to award incentive payments in an amount not to exceed \$1,000 to each named Plaintiff in this Action and related actions pending in other courts across the country.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you don't agree with the settlement or some part of it.

18. How do I tell the Court that I don't like the settlement?

If you're a Settlement Class Member, you can object to the settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter saying that you object to the proposed settlement in the *In re SONY BMG CD Technologies Litigation*. You must include your name, address, telephone number, the title of the XCP CD or MediaMax CD that you bought, received or used, and your signature. You must also state the reasons why you object to the proposed settlement. Mail the objection to each of the following addresses postmarked no later than _____, 2006:

COURT	CLASS COUNSEL	DEFENSE COUNSEL
Clerk of the Court United States District Court Daniel Patrick Moynihan United States Courthouse 500 Pearl Street New York, NY 10007-1312	GIRARD GIBBS & De BARTOLOMEO LLP Daniel C. Girard 601 California Street Suite 1400 San Francisco, CA 94108 Tel. (415) 981-4800 KAMBER & ASSOCIATES LLC Scott A. Kamber 19 Fulton Street, Suite 400, New York, NY 10038 Tel. (212) 571-2000	DEBEVOISE & PLIMPTON LLP Jeffrey S. Jacobson 919 Third Avenue New York, NY 10022 Tel: (212) 909-6000

19. What's the difference between objecting and excluding?

Objecting is simply telling the Court that you don't like something about the settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you cannot object because the case no longer affects you.

THE COURT'S SETTLEMENT HEARING

The Court will hold a hearing to decide whether to approve the settlement. You may come to the hearing and you may ask to speak, but you don't have to.

20. When and where will the Court decide whether to approve the settlement?

The Court will hold a Settlement Fairness Hearing at __: __.m. on _____, 2006, at the United States District Court, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, Courtroom 21A, New York, New York. At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay to Plaintiffs' counsel. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

21. Do I have to come to the hearing?

No. Class Counsel will answer questions the Court may have. But, you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

22. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must include with your objection, described in point 18 above, the statement, "I hereby give notice that I intend to appear at the Fairness Hearing in *In re SONY BMG CD Technologies Litigation*." Be sure to include your name, address, telephone number, the title of the XCP CD or MediaMax CD that you bought, received or used, and your signature. If you intend to have any witnesses testify or to introduce any evidence at the Fairness Hearing, you must list the witnesses and evidence in your objection. Your Notice of Intention to Appear must be postmarked no later than _____, 2006, and be sent to the Clerk of the Court, Class Counsel, and Defense Counsel, at the addresses shown in the answer to question 18. You cannot speak at the hearing if you excluded yourself.

IF YOU DO NOTHING

23. What happens if I do nothing at all?

If you do nothing, you will not get any settlement benefits described in Section 8. But, unless you exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the Defendants and the Released Parties about the claims that this settlement resolves, ever again.

GETTING MORE INFORMATION

24. Are there more details about the settlement?

This notice summarizes the proposed settlement. More details are in a Settlement Agreement dated December __, 2005. You can get a copy of the Settlement Agreement by visiting www._____.com. Copies of the Settlement Agreement may also be obtained from Class Counsel.

25. How do I get more information?

You can call the Claims Administrator at (800) ___ - ___ toll free with questions about submitting a Proof of Claim, or visit the Website at www._____.com, where you will find answers to common questions about the settlement, a claim form, plus other information to help you determine whether you are a Settlement Class Member and whether you are eligible for certain relief. Any other questions should be directed to Class Counsel identified in paragraph 18 above.

Date: _____, 2006

EXHIBIT 1

The Sony BMG CDs with XCP software¹ are:

ARTIST	TITLE	ITEM NUMBER(S)	UPC(S)
A Static Lullaby	Faso Latido	CK92772	827969277225
Acceptance	Phantoms	CK89016	696998901629
Amerie	Touch	CK90763	827969076323
Art Blakey	Drum Suit	CK93637	827969363720
The Bad Plus	Suspicious Activity?	CK94740	827969474020
Bette Midler	Sings the Peggy Lee Songbook	CK95107 CK74815	827969510728 828767481524
Billie Holiday	The Great American Songbook	CK94294	827969429426
Bob Brookmeyer	Bob Brookmeyer & Friends	CK94292	827969429228
Buddy Jewell	Times Like These	CK92873	827969287323
Burt Bacharach	At This Time	CK97734	827969773420
Celine Dion	On Ne Change Pas	E2K97736	827969773628
Chayanne	Cautivo	LAK96819 LAK96818 LAK95886	037629681921 037629681822 037629588626
Chris Botti	To Love Again	CK94823	827969482322
The Coral	The Invisible Invasion	CK94747	827969474723
Cyndi Lauper	The Body Acoustic	EK94569	827969456927
The Dead 60's	The Dead 60's	EK94453	827969445327

¹ Three titles — Ricky Martin, “Life”; Peter Gallagher, “7 Days in Memphis”; and a limited number of “Hidden Beach Presents Unwrapped Vol. 4” — were released with a content protection grid on the back of the CD packaging but XCP content protection software was not actually included on the albums.

Deniece Williams	This Is Niecy	CK93814	827969381427
Dextor Gordon	Manhattan Symphonie	CK93581	827969358122
Dion	The Essential Dion	CK92670	827969267028
Earl Scruggs	I Saw The Light With Some Help From My Friends	CK92793	827969279328
Elkland	Golden	CK92036	827969203620
Emma Roberts	Unfabulous And More: Emma Roberts	CK93950 CK97684	827969395028 827969768426
Flatt & Scruggs	Foggy Mountain Jamboree	CK92801	827969280126
Frank Sinatra	The Great American Songbook	CK94291	827969429129
G3	Live In Tokyo	E2K97685	827969768525
George Jones	My Very Special Guests	E2K92562	827969256220
Gerry Mulligan	Jeru	CK65498	074646549827
Horace Silver	Silver's Blue	CK93856	827969385623
Jane Monheit	The Season	EK97721	827969772126
Jon Randall	Walking Among The Living	EK92083	827969208328
Life Of Agony	Broken Valley	EK93515	827969351529
Louis Armstrong	The Great American Songbook	CK94295	827969429525
Mary Mary	Mary Mary	CK94812 CK92948	000768353721 827969294826
Montgomery Gentry	Something To Be Proud Of: The Best of 1999-2005	CK75324 CK94982	828767532424 827969498224
Natasha Bedingfield	Unwritten	EK93988	827969398821
Neil Diamond	12 Songs	CK94776 CK97811	827969477625 827969781128
Nivea	Complicated	82876671562	828766715620
Our Lady Peace	Healthy In Paranoid Times	CK94777	827969477724

Patty Loveless	Dreamin' My Dreams	EK94481	827969448120
Pete Seeger	The Essential Pete Seeger	CK92835	827969283523
Ray Charles	Friendship	CK94564	827969456422
Rosanne Cash	Interiors	CK93655	827969365526
Rosanne Cash	King's Record Shop	CK86994	696998699427
Rosanne Cash	Seven Year Ache	CK86997	696998699724
Shel Silverstein	The Best Of Shel Silverstein	CK94722	827969472224
Shelly Fairchild	Ride	CK90355	827969035528
Susie Suh	Susie Suh	EK92443	827969244326
Switchfoot	Nothing Is Sound	CK96534 CK96437 CK94581	827969653425 827969643723 827969458129
Teena Marie	Robbery	EK93817	827969381724
Trey Anastasio	Shine	CK96428	827969642825
Van Zant	Get Right With The Man	CK93500	827969350027
Vivian Green	Vivian	CK90761	827969076125

EXHIBIT 2

The SONY BMG CDs with MediaMax version 5.0 software are:

ARTIST	TITLE	SELECTION #
Alicia Keys	Unplugged	82876674242
		82876731662
Amici Forever	Defined	82876688832
Babyface	Grown & Sexy	82876705682
Black Rebel Motorcycle Club	Howl	8287671601
Britney Spears	Hitme - Remix	82876740622
Cassidy	I'm A Hustla	82876687072
		82876680732
Chris Brown	Chris Brown	82876733222
Cook, Dixon & Young	Volume One	82876673342
David Gray	Life In Slow Motion	82876710682
Dido	Dido Live	82876658099
Faithless	Forever Faithless/ENH	82876710142
Imogen Heap	Speak For Yourself	82876725322
Judd & Maggie	Subjects	82876692492
Leo Kottke/Mike Gordon	Sixty Six Steps	82876689092
Maroon 5	Live	82876709742
		82876699522
My Morning Jacket	Z	82876710672
Raheem Devaughn	The Love Experience	82876537232
Santana	All That I Am	82876597732
Sarah McLachlan	Bloom (Remix Album)	82876697982
Stellastarr*	Harmonies for the Haunted	82876688812
Syleena Johnson	Chapter 3: The Flesh	82876610932
T-Pain	Rappa Ternt Sanga	82876734472
		82876732002
Various	So Amazing: An All Star Tribute To Luther Vandross	82876624722
Various	Songs Brown Hotel	82876714112
Wakefield	Which Side Are You On?	82876685072
		82876681352
Charlie Wilson	Charlie, Last Name Wilson	82876694292
YoungBloodZ	Everybody Know Me	82876733402
		82876731752

EXHIBIT 3

The SONY BMG CDs with MediaMax version 3.0 software are:

ARTIST	TITLE	SELECTION #
Anderson, Keith	Three Chord Country	82876662942
Backstreet Boys	Never Gone (Walmart)	82876702442
Backstreet Boys	Never Gone (Target)	82876705342
Backstreet Boys	Never Gone	82876696112
Brickman, Jim	Grace	82876679792
Brickman, Jim	Grace (Provident Version)	82876687952
Citizen Cope	Clarance Greenwood Recordings	82876521142
Charlotte Martin	On Your Shore	82876606762
Chieftains, The	Live From Dublin	82876671372
Clay Aiken	Merry Christmas	82876626222
Dave Matthews Band	Stand Up	82876687962
Dido	"White Flag" W/Enhanced Features (Maxi	
Foo Fighters	In Your Honor (Bb Version)	82876705282
Foo Fighters	In Your Honor	82876680382
40 Below Summer	The Mourning After	79301828982
Hamilton, Anthoney	Coming From Where I'm From	82876521072
J-Kwon	Hood Hop (Edited)	82876583672
J-Kwon	Hood Hop (Ex)	82876576132
Kasabian	Kasabian	82876664282
Kings Of Leon	Aha Shake Heartbreak	82876645442
McLachlan, Sarah	"Fallen" W/Enhanced Features (Maxi Single)	82876601432
McLachlan, Sarah	Afterglow Live	82876644942
McLachlan, Sarah	Afterglow Live	82876645432
Nodesha	Get It While It's Hot (Maxi Single)	82876566902
Sahara Hotnights	Kiss & Tell	82876626892
Silvertide	Show & Tell	82876644022
Silvertide	Show & Tell (Ex)	82876609892
Soundtrack	Xxx: State Of The Union	82876679222
Soundtrack	Xxx: State Of The Union	82876681092
Stone, Angie	Stone Love	82876562152

Tha' Rayne	Didn't You Know (Maxi Single)	82876566882
Velvet Revolver	Contraband (Bb Version)	82876665102
Velvet Revolver	Contraband (Ed)	82876605242
Velvet Revolver	Contraband (Ex)	82876597942
Yung Wun	The Dirtiest Thir(Ex	82876607672
Yung Wun	The Dirtiest Thirstiest	82876609492
Various	Relaxation: A Windham Hill Collection	82876629422

EXHIBIT 4

The albums available for download by Settlement Class Members who purchased one of the SONY BMG CDs with XCP software listed in Exhibit 1 or SONY BMG CDs with MediaMax 5.0 software listed in Exhibit 2 are:

<u>ARTIST</u>	<u>GENRE</u>	<u>TITLE 1</u>	<u>Selection</u>	<u>Full Album</u>	<u>TITLE 2</u>	<u>Selection</u>	<u>Full Album</u>
Acceptance	Rock	Phantoms	CK 89016	YES			
Alexander, Jessi	Country	Honeysuckle Sweet	CK 90849	YES			
Amerie	R&B	All I Have	CK 85959	YES	Touch	CK 90763	YES
Amos, Tori	Pop	Scarlet's Walk	EK 86412	YES	The Beekeeper	EK 92800	YES
Anastacia	Dance	Freak of Nature	EK 86010	YES	Not That Kind	EK 69948	YES
Anointed	Gospel	Now is the Time	CK 90929	YES			
Anthony, Marc	Pop	Mended	CK 85300	YES	Marc Anthony	CK 69726	YES
Ataris	Rock	So long, Astoria	CK 86184	YES			
Babyface	R&B	The Essential: Babyface	EK 89172	YES			
Backstreet Boys	Pop	The Hits--Chapter One	01241417792	YES			
Bad Plus	Jazz	Give	CK 90771	YES	Suspicious Activity	CK 94740	YES
Blakey, Art	Jazz	The Jazz Messengers	CK 65265	YES			
Blu Cantrell		Bittersweet	82876527292	YES			
Botti, Chris	Jazz	To Love Again, The Duets	CK 677505	YES	When I Fall In Love	CK 92872	YES
Bow Wow	Rap	Wanted	CK 93505	YES			
The Calling	Rock	Two	82876566122	YES	Camino Palmero	7863675852	YES
Carpenter, Mary Chapin	Country	Between Here And Gone	CK 86619	YES	The Essential: Mary Chapin Carpenter	CK 90772	YES
Carter, Aaron	Pop	Most Requested Hits	82876555702	YES			
Cash, Roseanne	Country	Interiors	CK 677638	YES	Seven Year Ache	CK 677637	YES
Cassidy	R&B	Split Personality	82876588962	YES			
Cave In		Antenna	07863681312	YES			
Chasez, JC	Pop	Schizophrenic	82876537242	YES			
Citizen Cope		The Clarence Greenwood Recordings	82876521142	YES			
Coe, David Allan	Country	The Essential: David Allan Coe	CK 89073	YES			
Coheed and Cambria	Rock	In Keeping Secrets	CK 92686	YES	Good Apollo	CK 93989	YES
Colvin, Shawn	Pop	Polaroids	CK 93452	YES			
Coral	Rock	The Coral	CK 87192	YES			
Crossfade	Rock	Crossfade	CK 87148	YES			
Crowell, Rodney	Country	The Outsider	CK 94470	YES	Diamonds & Dirt	CK 61612	YES
Cypress Hill	Rap	III (Temples Of Boom) Edited	CK 67433	YES	Live At The Fillmore	CK 85273	YES
Da Brat	Rap	Limelite, Luv & Niteclubz	82876525092	YES			
Dead 60's	Rock	The Dead 60's	EK 677675	YES			
Diamond Rio	Country	Completely	07863670462				
Dimeola, Al	Jazz	The Essence of Al Dimeola	CK 52920	YES			
Dion, Celine	Pop	A New Day...Live In Las Vegas	EK 86400	YES			
Downey Jr, Robert	Pop	The Futurist	SK 92654	YES			
Dr. Hook	Pop	Super Hits	CK 85876	YES	The Essential Dr. Hook & Medicine Show Spirit (expanded)	CK 86813	YES
Earth Wind and Fire	Pop	Greatest Hits	C2K 86661	YES		CK 65739	YES
Ellington, Duke	Jazz	Piano In The Background	CK 87107	YES	Masterpieces By Ellington	CK 87043	YES
Ellis, Don	Jazz	Electric Bath	CK 65522	YES			
Estefan, Gloria	Pop	Unwrapped	EK 86790	YES	Mi Tierra	EK 53807	

Eve 6		Eve 6	07863676172	YES			
Fatty Koo	R&B	House Of Fatty Koo	CK 91256	YES			
Fishbone	Rock	Truth And Soul	CK 40891	YES	The Essential Fishbone	CK 86361	YES
Flatt & Scruggs	Country	Foggy Mountain Jamboree	CK 677627	YES			
Fleck, Bela	Jazz	Perpetual Motion	SK 89610	YES			
Frankie J	R&B	The One	CK 96432	YES			
Fuel	Rock	Something Like Human	EK 90705	YES			
Full Scale	Rock	Full Scale	CK 93557	YES			
Future Leaders of the World	Rock	LVL IV	EK 89192	YES			
Getz, Stan	Jazz	Jazz Moods: Cool	CK 90690	YES			
Ginuwine	Rap	The Senior	EK 86960	YES			
Good Charlotte	Rock	The Chronicles of Life & Death	EK 92425	YES			
Gordon, Dexter	Jazz	Manhattan Symphonie	CK 677633	YES			
Gray, Macy	R&B	The Very Best Of Macy Gray	EK 92944	YES	Macy Gray On How Life Is A Love Story	EK 61400	YES
Green, Vivian	R&B	Vivian	CK 677881	YES			
Gregory, James	Comedy	It Could Be A Law, I Don't Know! The Funniest Man In America	EK 46080	YES			
Griffin, Eddie	Comedy	Message In The Hat	EK 53806	YES			
Griggs, Andy	Country	This I Gotta See	82876596302	YES			
Haggard, Merle	Country	Love Songs	EK 90569	YES	The Essential Merle Haggard: The Epic Years	EK 90568	YES
Hancock, Herbie	Jazz	The Piano	CK 87083	YES			
Heart	Rock	Little Queen	EK 85772	YES	Bebe Le Strange	EK 85770	YES
Incubus	Rock	A Crow Left Of The Murder	EK 90890	YES	Morning View	EK 85227	YES
Indigo Girls	Rock	Indigo Girls	EK 85109	YES	All That We Let in	EK 91003	YES
Indigo Girls	Rock	Rites Of Passage	EK 61576	YES			
Jagged Edge	R&B	Hard	CK 87017	YES	JE Heartbreak	CK 69862	YES
Jennings, Waylon	Country	Highwayman 2	CK 45240	YES			
Jewell, Buddy	Country	Times Like These	CK 677879	YES	Buddy Jewell	CK 90131	YES
Jones, George	Country	Love Songs	EK 87151	YES			
Kings of Leon		Aha Shake Heartbreak	82876645442	YES			
Korn	Rock	Greatest Hits, Vol 1	EK 92700	YES	Issues	EK 62239	YES
Kristopherson, Kris	Country	Kristofferson	JK 85281	YES			
Labelle, Patti	R&B	Love Songs	EK 85290	YES			
Lamb of God	Rock	Ashes Of The Wake	EK 90702	YES			
Lambert, Miranda	Country	Kerosene	EK 92026	YES			
Lauper, Cyndi	Pop	The Body Acoustic	EK 94569	YES			
Leadbelly	Blues	King Of The 12-String Guitar	CK 46776	YES			
Lewis, Ramsey	Jazz	Love Songs	CK 93568	YES			
Lit	Rock	A Place In The Sun	82876681515	YES	Atomic	07863680862	YES
Longwave		There's A Fire	82876670352	YES	The Strangest Things	07863681792	YES
Lopez, Jennifer	Pop	Rebirth	EK 90622	YES			
Loveless, Patty	Country	On Your Way Home	EK 86620	YES			
Marie, Teena	R&B	Robbery	EK 677629	YES	Super Hits	EK 86344	YES
Marsalis, Wynton	Jazz	Hot House Flowers	CK 39530	YES	Marsalis Plays Monk	CK 67503	YES
Martin, Charlotte	Rock	On Your Shore	82876606762	YES			
Martin, Ricky	Pop	Life	CK 678318	YES	Ricky Martin	CK 69891	YES
Mary Mary	R&B	Mary Mary	CK 677733	YES			
Mathis, Johnny	Pop	Love Songs	CK 87065	YES	Christmas Music: A Personal Collection		
Mathis, Johnny	Pop	Open Fire, Two Guitars	CK 65862	YES	Good Night, Dear Lord	CK 64891	YES

McKay, Nellie	Pop	Get Away From Me	C2K 90940	YES			
Monk, Thelonious	Jazz	The Essential: Thelonious Monk	CK 89175	YES	Jazz Moods: 'Round Midnight	CK 90692	YES
Monroe, Bill	Country	16 Gems	CK 53908	YES			
Montgomery Gentry	Country	You Do Your Thing	CK 90558	YES			
Moore, Mandy	Pop	The Best of Mandy Moore	EK 93458	YES			
Mudvayne	Rock	Lost And Found	EK 90784	YES			
Mulligan, Gerry	Jazz	Jeru	CK 677634	YES			
Nalick, Anna	Pop	Wreck Of The Day	CK 90891	YES			
Nas	Rap	God's Son	CK 86985	YES			
Nine Days	Rock	The Maddening Crowd	BK 63634	YES			
O'jays	R&B	The Essential O'Jays	EK 90632	YES			
Omarion	R&B	O	EK 92818	YES			
Paul, Billy	Pop	Super Hits	EK 86553	YES			
Paycheck, Johnny	Country	Johnny Paycheck - 16 Biggest Hits	EK 69968	YES			
Phillips, Esther	Jazz	Jazz Moods	EK 93641	YES			
Randall, Jon	Country	Walking Among The Living	EK 92083	YES			
Raveonettes		Chain Gang of Love	CK 90353	YES			
Raye, Colin	Country	16 Biggest Hits	EK 86682	YES			
Rich, Charlie	Country	16 Biggest Hits	EK 69740	YES			
Rockpile	Rock	Seconds Of Pleasure	CK 63983	YES			
Satriani, Joe	Rock	Is There Love In Space?	EK 90832	YES	Strange Beautiful Music	EK 86294	YES
Savage Garden	Pop	Savage Garden	CK 67954	YES			
Scruggs, Earl	Country	I Saw The Light With Some Help From My Friends	CK 92793	YES			
Simon, Carly	Pop	Moonlight Serenade	CK 94890	YES			
Simpson, Jessica	Pop	In This Skin	CK 92005	YES			
Sinatra, Frank	Pop	I've Got A Crush On You	CK 66964	YES	Sinatra Sings His Greatest Hits	CK 65240	YES
Skaggs, Ricky	Country	Live In London	EK 93546	YES			
Stanley Brothers	Country	The Complete Columbia Stanley Brothers	CK 53798	YES			
Sweet, Matthew	pop	Time Capsule: The Best of Matthew Sweet 1990-2000	61422311572	YES			
Switchfoot	Rock	Nothing Is Sound	CK 94581	YES	The Beautiful Letdown	CK 86967	YES
Tatum, Art	Jazz	Piano Starts Here	CK 64690	YES			
Train	Pop	Alive At Last	CK 92830	YES	My Private Nation	CK 86593	YES
Tritt, Travis	Country	My Honky Tonk History	CK 92084	YES	Strong Enough	CK 86660	YES
Tyrell, Steve	Jazz	This Guy's In Love	CK 89238	YES	This Time Of Year	CK 86638	YES
Vandross, Luther	R&B	This Is Christmas	EK 92701	YES	The Ultimate Luther Vandross	EK 85991	YES
Vandross, Luther	R&B	Your Secret Love	EK 67553	YES	The Essential Luther Vandross	E2K 89167	YES
Vaughan, Sarah	Jazz	Love Songs	CK 93570	YES	Sarah Vaughan In High-Fi	CK 65117	YES
Vendetta Red	Rock	Between the Never and the Now	EK 86415	YES			
The Verve Pipe	Pop	Underneath	07863679962	YES			
Watts Jeff Train	Jazz	Citizen Tain	CK 69551	YES			
White, Peter	Jazz	Confidential	CK 89090	YES			
Xscape	Rap	Traces Of My Lipstick	CK 68042	YES	Off The Hook	CK 67022	YES
Yamagata, Rachael		Happenstance	82876505662	YES			
ZZ Top	Rock	Mescalero	82876511682	YES			

EXHIBIT 5

Upon Final Approval, Defendants agree to waive all of their rights to enforce the following provisions of the XCP EULA and the MediaMax 5.0 EULA (which are identical):

1. **Article 2**, to the extent such provision could be construed as precluding consumers from transferring music they purchased to media players and portable devices that are not “APPROVED MEDIA PLAYERS” and “APPROVED PORTABLE DEVICES” (as those terms are defined in the EULA);
2. **Article 2.3**;
3. **Article 3.1(a)**, to the extent such provision could be construed to prevent copying or reproducing the “DIGITAL CONTENT” otherwise permitted by applicable laws;
4. **Article 3.1(b)**, to the extent such provision could be construed to prevent resale of the physical CD on which the “DIGITAL CONTENT” is embodied;
5. **Article 3.1(c)**, to the extent such provision could be construed as giving Defendants an affirmative right to preclude uninstallation of the XCP Software or MediaMax Software, or other non-negligent efforts to remedy the Security Vulnerabilities allegedly associated with such software;
6. **Article 3.1(f)**, to the extent anything in such provision is inconsistent with SONY BMG’s waiver of rights under this Paragraph U;
7. **Articles 7 and 8**;
8. **Article 9(1)**; and
9. **Article 9.2(ii)-(iii)**.

Upon Final Approval, SONY BMG and SunnComm also agree to waive all of their rights to enforce the following provisions of the MediaMax 3.0 EULA:

1. **Paragraph III**, to the extent anything in such provision is inconsistent with SONY BMG’s waiver of rights under this Paragraph U;
2. **Article 1.1**, to the extent such provision could be construed as precluding consumers from transferring music they purchased to a media player or portable device that is not a “Digital Content System” (as that term is defined in the MediaMax 3.0 EULA);
3. **Article 1.2**;

4. **Article 1.3**, to the extent such provision could be construed as (i) preventing copying or reproducing otherwise permitted by applicable laws, (ii) preventing the resale of the physical CD on which the “Digital Content” is embodied, or (iii) giving SONY BMG or SunnComm an affirmative right to preclude uninstallation of the MediaMax software, or other non-negligent efforts to remedy the Security Vulnerabilities allegedly associated with such software; and
5. **Article 1.4**, to the extent such provision could be construed to prevent copying or reproducing otherwise permitted by applicable laws.

Defendants agree to waive the limitation of liability provisions (Article 6 of each of the XCP EULA and the MediaMax 5.0 EULA; Article 4.1 of the MediaMax 3.0 EULA), and the New York forum selection clauses (Article 10 of each of the XCP EULA and the MediaMax 5.0 EULA; Article 6.1 of the MediaMax 3.0 EULA) of the EULAs only in cases where a Settlement Class Member alleges non-Released Claims on his or her own behalf only, and not as a putative class action, mass action or private attorney general proceeding.