

SETTLEMENT AGREEMENT

DRAFT

THIS SETTLEMENT AGREEMENT (the "Agreement") is made as of this 30th day of June, 1988, by and between (1) Capitol Industries-EMI, Inc. ("Capitol") and Capitol Records, Inc. ("Capitol Records") and their parents, divisions, subsidiaries and affiliates as well as their agents, servants, employees, representatives, successors in interest, officers, shareholders, partners, directors, insurers and attorneys (collectively referred to as the "Capitol Parties"); and (2) Warner Communications<sup>Warner</sup> Inc. ("WCI") and Elektra/Asylum/Nonesuch Records ("E/A"), a division of WCI (collectively referred to as the "Warner Parties").

By writings dated as of  
Effective July 1, 1986, Capitol Records and Sound of Los Angeles Records, Inc. ("SOLAR") entered into a number of agreements which, among other things, <sup>purported to</sup> ~~granted~~ to Capitol Records the exclusive right to distribute all recordings manufactured by or for SOLAR through, at the earliest, June 30, 1989. The distribution agreement, as amended, bearing Contract No. CRI-D-1028 is hereinafter referred to as the "Capitol/SOLAR Distribution Agreement". E/A asserted that it had the exclusive right to distribute recordings of certain identified artist groups who had contractual arrangements with SOLAR. SOLAR disputed E/A's claims.

→ "and as to which SOLAR purported to grant to Capitol exclusive distribution rights under the Capitol/SOLAR Distribution Agreement".

On September 16, 1986, SOLAR and Richard G. Griffey ("Griffey") initiated an action against WCI and several

WCI-related companies captioned Sound of Los Angeles Records, Inc. and Richard G. Griffey v. Warner/Elektra/Asylum Music, Inc., et al., United States District Court No. CV 86-6016-RG (the "Complaint"), seeking damages and equitable relief for <sup>E</sup>numerous statutory violations, contract breaches and state law torts <sup>E</sup>all in connection with <sup>inter alia,</sup> several agreements between E/A, SOLAR and Griffey. Thereafter, the Complaint was amended twice and the claims of SOLAR and Griffey are now reflected in a Second Amended Complaint. On November 14, 1986, Warner and E/A responded to the allegations of SOLAR and Griffey and filed counterclaims against them for, inter alia, judicial foreclosure, breach of contract, an accounting and declaratory relief (the "Counterclaim").

On March 18, 1987, Warner and E/A <sup>filed and</sup> served an amended and supplemental counterclaim and third party complaint against SOLAR <sup>Griffey</sup> and Capitol <sup>as to Capitol</sup> claiming inter alia, that Capitol infringed copyrights held by E/A and interfered with E/A's contracts with SOLAR by distributing and/or proposing to distribute recordings from five artist groups signed to the SOLAR label which E/A contended it had the exclusive right to distribute by virtue of its contracts with SOLAR. These five groups were Lakeside, Shalamar, Midnight Star, The Whispers and The Deele (hereinafter collectively referred to as the "Disputed Acts"). As of March 1987, E/A claimed, and SOLAR and the Capitol Parties disputed, <sup>that E/A had</sup> the exclusive right to distribute the next <sup>two</sup> recordings of The Deele; the next four (4) recordings of The Whispers; the next four (4) recordings of Lakeside; the next

(4) recordings of Shalamar and the next two (2) recordings of Midnight Star. On April 23, 1987, E/A and Warner filed a First Amended Supplemental Counterclaim against SOLAR and Griffey; Capitol was named as an "additional counterdefendant."

In that pleading the Warner Parties alleged, inter alia, that SOLAR, Griffey and the Capitol Parties were infringing and intended to infringe in the future E/A's copyrights by distributing or proposing to distribute recordings of the Disputed Acts; that the Capitol Parties had tortiously induced SOLAR and Griffey to breach their agreements with E/A under which E/A had the exclusive right to manufacture and distribute recordings by the Disputed Acts; that the Capitol Parties had tortiously interfered with the prospective economic relationships existing between E/A, SOLAR and Griffey with respect to the Disputed Acts; that the Capitol Parties, SOLAR and Griffey were engaged in acts of unfair competition with respect to Capitol's proposed distribution of recordings of the Disputed Acts; and that SOLAR and Griffey had conspired with the Capitol Parties to engage in the alleged wrongdoing".

On May

4, 1988, Capitol replied to the First Amended Supplemental Counterclaim.

"denying the material allegations thereof".

As of May 31, 1988, Capitol was distributing one (1) album by Lakeside, one (1) album by The Deele, one (1) album by The Whispers and one (1) album by Shalamar. The Complaint (including the Second Amended Complaint), the Counterclaim and the First Amended Supplemental Counterclaim are collectively hereinafter referred to as the "Lawsuit."

The Capitol Parties and the Warner Parties now desire to enter into a settlement of the outstanding disputes and claims against each other. In consideration of the terms and covenants of this Agreement, the parties hereto agree as follows:

need analysis  
include singles

SEE ATT (K)  
JUN of CP.  
MASTERS

did EA have  
right?

wd count against  
album total? —  
or, on 24 hr?  
typically does not  
fulfill usn. master  
delivery rts.

① delete entirely  
② wd have to  
be prorated  
down

eg 44 (based on # of  
selections)  
③ use of price base  
instead?

reduced rate  
for b/o's?

1. Definitions. As used in this Agreement, the following terms shall have the meanings set forth below:

(a) "Record" or "Records" shall mean and refer to all forms of discs, tapes, compact discs and other <sup>audio visual or</sup> sound devices upon which sound, derived in whole or part from masters, is recorded for later transmission to listeners, and which are manufactured into finished

"singles, videocassettes, compact disc graphics, 'best of' albums or compact discs and",  
album-length goods of eight <sup>8</sup> or seven <sup>(7)</sup> or more

newly recorded masters by the Disputed Acts, first released on or after July 1, 1986, <sup>manufactured or</sup> obtained by Capitol Records

50 album masters  
newly recorded  
masters

this cuts  
against  
them

for distribution pursuant to the Capitol/SOLAR Distribution Agreement,

the Capitol/SOLAR manufacturing agreement dated as of July 1, 1986, and/or any other agreement of any kind whatsoever between the Capitol Parties, SOLAR or Griffey which amends, extends, renews, modifies or takes the place of the Capitol/SOLAR distribution agreement and/or the Capitol/SOLAR manufacturing agreement"

including the package into which they are assembled, or reassemble

(b) "Territory" shall mean and refer to the entire United States, and its territories and possessions.

and military exchanges, wherever located

(c) "Person" shall mean any natural person, firm, corporation, association, union, or other entity recognized by law.

(d) "Gross Sale" shall mean Capitol Records' shipments through normal retail channels of a Record to a customer in response to an order. It shall not include Promotional Records and Free Goods.

ex of contracts

amount of said Free Goods does not exceed fifteen percent (15%) of Gross Sales of the Record" which "Promotional Records and Free Goods shall be"

"so long as the total"

3 below.

over what pt? crossed for all acts?

Solar's decision, not ours

(e) "Net Sales" shall mean all Gross Sales less Records returned to Capitol Records for refund or credit. A "Return" shall occur upon (1) the actual receipt of the returned Record by Capitol Records' Returns Center, or (2) Capitol Records' crediting its customer on account of the Return, whichever occurs earlier.

→ on FG's  
discount ~~20%~~ on discount programs  
of 20% discount by reduction in net margin.

2. Override Royalty to E/A.

(a) "The override royalty prescribed herein shall affix to the master(s) from which the Records are manufactured, in whole or in part."

Capitol Records shall pay to E/A an override royalty on the Net Sales of Records distributed in the one hundred percent (100%) of

inclusion or  
exclusion of  
FGs?

Territory for the number of <sup>masters</sup> Records reflected in Column (A) below at the rate specified in Paragraph 2(c) below, as follows:

*intends to exclude "best of"*

Group	(A) <u>Maximum Number of Records Subject to Override</u> <i>LP? Masters</i>	(B) <u>Number of Records Already Released By Capitol Records</u> <i>Delivered to</i>	(C) <u>Maximum Number of Records Remaining Subject to Override</u> <i>Masters</i>
Lakeside	4 <i>if we release it as an album, it shd count</i>	1	3
The Whispers	4	1	3
Shalamar	4	1	3
The Deele	± 2	1	0 1
Midnight Star	2	0	

*at LP Masters?*

*ie next record is 2 royalty pay? do we still pay on records released?*

(b) The obligation to pay a royalty to E/A shall terminate on the earlier of (1) the distribution by Capitol Records of the number of Records for each Disputed Act which appears next to the name of the act in Column (A) in Paragraph 2(a) above, or (2) upon expiration or termination of the Capitol/SOLAR Distribution Agreement.

*on further ones but not on past ones which goes on forever subject to (b)*

"including any extensions, renewals, amendments or modifications thereof or substitutions therefor, as well as any selloff period provided in any of said agreements"

including any extensions thereof.

(c) The royalty rate shall be 20¢ per Record on Net Sales of the Records referred to in paragraph 2(a) until Net Sales yield \$1,100,000 in royalties. Thereafter, the royalty rate shall be 12.5¢ per Record on Net Sales of the Records referred to in Paragraph 2(a). These royalty rates shall be proportionally reduced to the extent that Records are sold at

wholesale at less than Capitol Records' full subdistributor price for similar new releases.

~~"so long as the combined total of (1) said Records sold at wholesale or less than Capitol Records' full subdistributor price and (2) the Promotional Records and Free Goods allowed in paragraph 1(d) above does not exceed the fifteen percent (15%) of gross sales limit prescribed in paragraph 1(d) above."~~

*we don't control*

*what about discount programs*

*what about cut-outs?*

*no restrictions on G.P.S.  
authorization of discounts  
pay on actual revenues*

3. Promotional Records, Free Goods and Sales

Programs. Notwithstanding paragraph 2 above, no royalty override payment shall be due from Capitol Records to E/A on Records (a) given away; *increased sales? fee!*

*so long as the Capitol Parties do not receive or benefit from any consideration of any kind whatsoever in exchange for those Records being given away"*

*("subject to the fifteen percent (15%) limit allowed in paragraph 1(b) above,")*  
"furnished"

*concern that we use solar records to promote CRI.*

(b) furnished on a "no charge" basis

for promotional purposes; (c) furnished as a sales inducement or otherwise to disc jockeys, radio and television stations or networks, ~~independent distributors, subdistributors and dealers;~~ *\* PROBLEM HERE* (d) ~~sold as "cutouts" or on closeout;~~ (e) sold or otherwise disposed of as scrap; <sup>or</sup> (f) sold to employees of Capitol or Capitol Records; ~~or (g) sold at less than one-half (1/2) of Capitol Records' full subdistributor price for similar new releases.~~

*must start in !*

4. Reserves.

(a) Capitol Records shall be entitled to deduct from any payment owing to E/A a Reserve equal to twenty-five percent (25%) of the royalty payable against future credits, rebates or adjustments for Returns ~~or other sums payable by E/A to Capitol~~ (hereinafter the "Reserve").

*doesn't make sense!*

(b) One ~~sixth~~ <sup>fifth</sup> (1/<sup>5</sup>th) of the Reserve taken in the first (1st) month of this Agreement shall be liquidated and reported on each monthly statement for the seventh (7th) through twelfth (12th) months of this Agreement, and on such

basis thereafter. By way of illustration, in the eighth (8th) month of this Agreement, one-~~sixth~~<sup>fifth</sup> (1/~~6~~<sup>5</sup>)th of the Reserve taken in the first (1st) month shall be liquidated and reported, together with one-~~sixth~~<sup>fifth</sup> (1/~~6~~<sup>5</sup>)th of the Reserve taken in the second (2nd) month; in the ninth (9th) month, one-~~sixth~~<sup>fifth</sup> (1/~~6~~<sup>5</sup>)th of the Reserve taken in the first (1st) month shall be liquidated and reported, together with one-~~sixth~~<sup>fifth</sup> (1/~~6~~<sup>5</sup>)th of the Reserve taken in the second (2nd) month and one-~~sixth~~<sup>fifth</sup> (1/~~6~~<sup>5</sup>)th of the Reserve taken in the third (3rd) month; and so forth. Upon its being liquidated and reported, the amount of the Reserve shall be applied to any amount owed by E/A

to this Settlement Agreement"

to Capitol Records pursuant

and the

balance remaining credited to E/A's account. The Reserve shall be reduced by the amount so applied.

(c) Until it actually is paid by Capitol Records to E/A, or otherwise reduced, the Reserve shall be accounted for separately on each statement (but owned by Capitol<sup>?</sup>). ~~E/A shall not earn the Reserve until it actually is due and paid by Capitol Records to E/A.~~

5. Statements and Payments. For each calendar month during the term of this Agreement, Capitol Records shall render and mail a statement to E/A setting forth the Gross Sales and the Net Sales of Records distributed during such calendar month. Such statement also shall set forth any deductions therefrom pursuant to any provision of this Agreement. Capitol Records shall ~~endeavor to~~ mail such statement to E/A on or before the last day of the second (2nd) full calendar month

following the monthly period covered by the statement. Any net payment due from Capitol Records to E/A shall accompany the statement. ~~If, for any month, the number of Returns exceeds Gross Sales (hereinafter referred to as "Excessive Returns"), then E/A shall reimburse Capitol Records for the overpayment of override royalties by paying Capitol Records an amount equal to the applicable royalty rate multiplied by the number of Excessive Returns. Any payment owing from WCI to Capitol shall constitute an account stated and immediately shall be due and payable after the rendering of the statement. Capitol's failure to set forth an amount due and payable by WCI to Capitol shall not constitute a waiver of any amount due.~~

right to deduct from sub 97+ pts.  
 what about termination?

IMPART ANT!  
 215: flex to take 7 reviews

may be customary in artist agts, - but not here.

6. <sup>Payment</sup> ~~Advance~~ to WCI. Within ten (10) business days following approval of this Agreement by the Court, Capitol shall <sup>pay</sup> advance to E/A the sum of Nine Hundred thousand Dollars (\$900,000.00) (the <sup>payment</sup> "Advance") against any and all override royalties or other monies payable by Capitol Records to E/A hereunder, ~~which Advance shall be fully recoupable by Capitol Records from any funds otherwise payable to E/A hereunder.~~

STET

"No portion of the payment to E/A provided for in this paragraph 6 shall be ~~recoupable by or~~ refundable to the Capitol Parties under any circumstances whatsoever, it being fully understood and agreed to by the parties hereto that a material consideration for E/A entering into this Settlement Agreement is the payment in full by Capitol of the sum of nine hundred thousand dollars (\$900,000) as provided for herein."



7. Examination of Certain Accounting Records.

(a) Provided that E/A previously shall have notified Capitol Records in writing of its objections to such statement, specifying with particularity each element of such statement to which objection is made, E/A may, at any mutually agreed upon time within <sup>twenty-four</sup> ~~twelve~~ (12) months after any statement is rendered

to E/A hereunder, examine the books and records of Capitol Records described below with respect to such objections.

(b) Such examination shall be conducted at E/A's sole cost and expense by an independent Certified Public Accountant designated by E/A who certifies that (i) he shall conduct such examination in accordance with the then-current rules and regulations of the applicable society of Certified Public Accountants; (ii) such examination shall be conducted in accordance with generally accepted accounting principles; and (iii) the results of any such examination, including any written report resulting therefrom, and the contents thereof, shall not be disclosed to any person or entity (other than Capitol, Capitol Records, E/A and WCI) without Capitol Records' prior written consent. As a condition precedent to any such inspection, Capitol Records may require any such Certified Public Accountant to execute a Letter of Engagement pledging his compliance with the terms of this Paragraph.

→ "Such examination shall be conducted at E/A's sole cost and expense by a person(s) designated by E/A. Except in any lawsuit or other proceeding between or among E/A, WCI and Capitol Records, the results of any such examination, including any written report resulting therefrom, and the contents thereof, shall not be disclosed to any person or entity (other than Capitol, Capitol Records, E/A and WCI) without Capitol Records' prior written consent. As a condition precedent to any such inspection, Capitol Records may require the person(s) designated by E/A to conduct the examination to execute a Letter of Engagement pledging his compliance with the terms of this Paragraph."

(c) Such examination shall be made during Capitol Records' usual business hours at the place where Capitol Records maintains the books and records described below, and E/A's examination shall be limited to the same.

↳ "Within two (2) weeks after E/A's request therefor, Capitol shall advise E/A in writing where the books and records E/A desires to examine pursuant to paragraph 7(a) above are located and shall make said books and records available to the person(s) which E/A designates pursuant to paragraph 7(b) above at said location or any other mutually-agreeable location within sixty (60) days following E/A's written request therefor."

(d) E/A's sole right to inspect Capitol Records' books and records shall be as set forth in this Paragraph 7, and Capitol Records shall have no obligation to produce such

books and records more than once with respect to each statement rendered to E/A nor more than once in any calendar year.

(e) Without limiting the generality of the foregoing, E/A acknowledges that Capitol Records' statements of account are based upon compilations generated in the ordinary course of Capitol Records' business by Capitol Records' computer system, and that said computer-generated compilations shall constitute the sole source documents in, and be dispositive of, any dispute between the parties as to the accuracy or completeness of statements and inventories furnished by Capitol Records hereunder. Capitol Records shall have no obligation to furnish E/A with any additional books or records.

(f) Except with respect to objections made by E/A in accordance with subparagraph (a) of this Paragraph, each statement rendered to E/A shall be final, conclusive and binding on E/A and shall constitute an account stated. E/A shall be foreclosed from maintaining any action, claim or proceeding against Capitol Records in any forum or tribunal with respect to any statement or accounting due hereunder unless (a) such action, claim or proceeding is commenced against Capitol Records in a court of competent jurisdiction within ~~two~~<sup>three</sup> ~~2~~<sup>3</sup> years after the date upon which such statement or accounting is rendered, and (b) E/A previously shall have submitted to Capitol for inspection and review a copy of any written report resulting from any such examination at least six

(6) months prior to the institution of any such action, claim or proceeding.

8. Notices.

(a) All notices that the Capitol Parties may be required or desire to serve upon the Warner Parties shall be served by depositing same, postage prepaid, registered mail or certified mail, return receipt requested, in any mail box, chute, or other receptacle authorized by the United States Postal <sup>Service</sup> ~~Office~~ Department for mail, addressed to E/A at the address below its signature, or at such other address as E/A may from time to time designate by written notice to Capitol Records pursuant to this Paragraph. The date of notice shall be deemed to be five (5) business days following the date of deposit into the United States mail. Statements and payments shall be mailed to E/A at the address below its signature, *and shall be deemed made when received.*

(b) All notices that the Warner Parties may be required or desire to serve upon the Capitol Parties shall be served by depositing same, postage prepaid, registered mail or certified mail, return receipt requested, in any mail box, chute, or other receptacle authorized by the United States Postal <sup>Service</sup> ~~Office~~ Department for mail, addressed to Capitol Records at the address below its signature, or at such other address as Capitol Records may from time to time designate by written notice to E/A pursuant to this Paragraph. The date of notice shall be deemed to be five (5) business days following the date

of deposit into the United States mail. Payments shall be mailed to Capitol Records at the address below its signature and shall be deemed made when received.

9 <sup>Limited</sup> (a) Release. The Warner Parties hereby release the Capitol Parties from: Any and all claims, demands, debts, losses, obligations, liabilities, costs, expenses, rights of action and causes of action, of any kind or character whatsoever, whether known or unknown, suspected or unsuspected, which arise out of or relate to the Disputed Acts, the Lawsuit, or the various agreements between E/A, WCI, SOLAR and/or Griffey which are identified in the Lawsuit (the "SOLAR-E/A Agreements"), all of which are hereinafter called the "Released Claims."

(b) "Notwithstanding anything to the contrary stated herein, the Warner Parties' Release as set forth herein is not, and shall not be deemed or construed to be, a release, waiver or settlement of any claim, demand or cause of action which the Warner Parties, or any of them, have against Griffey or SOLAR by reason of the manufacture and/or distribution of recordings by the Disputed Acts by and/or through Capitol, including, but not limited to, the claims for relief alleged against SOLAR and Griffey in the Lawsuit."

10. Dismissal With Prejudice. Within five business days following approval of this Agreement by the Court, WCI and E/A shall request the Court to dismiss the First Amended Supplemental Counterclaim with prejudice.

as to the <sup>Capitol</sup> parties only

11. Unknown Facts.

(a) It is understand<sup>ed</sup> and agreed that the Released Claims include all claims of every nature and kind whatsoever, known or unknown, suspected or unsuspected,

→ "as between the Warner Parties and the Capitol Parties only arising out of the events and circumstances alleged in the Lawsuit".

→ and all rights under Section 1542 of the Civil Code of California are hereby expressly waived. The consequences of such waiver have been

explained by counsel to each of the parties hereto. Section 1542 provides as follows:

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.

(b) The Warner Parties, and each of them, acknowledge that they may hereafter discover facts different from, or in addition to, those which they now know or believe to be true with respect to the Released Claims, and agree that this agreement and the releases contained herein shall be and remain effective in all respects notwithstanding such different or additional facts or the discovery thereof.

12. Indemnity Re Assignment of Claims. The Warner Parties hereby represent to the Capitol Parties that they have not heretofore assigned, transferred, pledged, or hypothecated, or purported to assign, transfer, pledge, or hypothecate, to any person, entity, or individual, any of the claims herein released. The Warner Parties agree to indemnify and hold harmless the Capitol Parties against any claim, demand, debt, loss, obligation, liability, cost, expense (including reasonable attorneys' fees), right of action or cause of action, based on, arising out of, or in connection with, any

such transfer, assignment, pledge, or hypothecation, or purported transfer, assignment, pledge, or hypothecation.

13. Attorneys' Fees to Enforce this Agreement. If an action is instituted to enforce this Agreement, the party or parties not prevailing shall pay to the party or parties prevailing all costs and expenses, including reasonable attorneys' fees, incurred by such prevailing party in connection with said action.

14. Successors and Assigns. This Agreement, and the releases contained herein, shall bind and inure to the benefit of the principals, agents, representatives, successors, heirs, and assigns of the parties hereto.

15. Further Instruments. The parties, and each of them, shall from time to time execute and deliver such further instruments or take such further action as any of the parties or their counsel may reasonably request to effectuate the intent of this Agreement.

16. Survival of Rights Hereunder. Notwithstanding the releases contained herein, all of the rights and obligations created under and pursuant to this Agreement shall survive the execution of this Agreement and the releases contained herein.

17. Covenant Not to Sue. WCI and E/A agree and covenant that they will not sue the Capitol Parties or any customer of the Capitol Parties now or at any time in the future on account of Capitol Records' distribution of Records<sup>(as defined in 1(a) above)</sup> or other recordings by the Disputed Acts.

→ "except to enforce claims arising out of or relating to this Settlement Agreement."

*This is what we are doing for me?*

~~E/A and WCI hereby acknowledge Capitol Records' exclusive right to distribute Records during the term of the Capitol/SOLAR Distribution Agreement and any extension thereof. WCI and E/A also agree that they will not deprive Capitol Records of its exclusive right to distribute recordings from SOLAR under the Capitol/SOLAR Distribution Agreement and that in the event the Warner Parties or, any of them, obtain a judgment against SOLAR, they will seek to execute or levy on the Capitol Parties only on any payments which may be due to SOLAR by Capitol Records. E/A hereby grants to Capitol Records a perpetual, royalty-free sublicense to manufacture, distribute and sell any Records or other recordings delivered to Capitol Records by SOLAR which contain or constitute sound recordings which E/A claims any exclusive right to distribute pursuant to any agreement it has entered into with SOLAR. E/A does not warrant or represent that it has or will have any such right with respect to any such masters and Capitol Records acknowledges that no such warranties or representations are being made. By granting this sublicense, E/A is not assigning any duties it might have to SOLAR under any of its agreements with SOLAR and both the Warner Parties and the Capitol Parties understand and acknowledge that all such duties, if any, are to be performed solely by E/A.~~

*amount payable from and after  
sales account from 7-1-86*

*want to make life miserable for solar*

*we need to recoup!*

*a license to continue  
dispute?*

18. Entire Agreement. This Agreement represents the entire agreement between the parties and supersedes all prior negotiations, representations or agreements between the parties, either written or oral. This Agreement may be amended only by written instrument designated as an amendment to this Agreement and executed by all parties hereto.

19. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Any action to enforce or construe this Agreement shall be brought in either the Los Angeles County Superior Court or the United States District Court for the Central District of California.

20. Execution in Counterparts. It is expressly contemplated that this agreement will be executed in separate counterparts by the Capitol Parties and the Warner Parties. Each of said counterparts, when so executed and delivered, shall be deemed an original and, taken together, shall constitute but one and the same instrument.

21. No Third Party Beneficiaries. There are no third party beneficiaries, either intended or incidental, of this Agreement.

22. Captions. Any captions to the paragraphs or subparagraphs of this Agreement are solely for the convenience of the parties, are not a part of this Agreement, and shall not

be used for the interpretation of, or determination of validity of, this Agreement or any provision hereof.

23. No Inference from Drafting. The parties hereto acknowledge that they have participated in the drafting of the Agreement and that Civil Code Section 1654 shall have no application in connection with the interpretation of this Agreement.

24. Court Approval. This Agreement shall be effective upon the approval of this Agreement by the United States District Court for the Central District of California as a good faith settlement. Upon approval by the Court, all bonds and undertakings posted by or at the Capitol Parties' request, or any of them, shall be exonerated. ~~In the event of a claim by SOLAR against the Capitol Parties, or any of them, for contribution or indemnity which arises out of or relates to the Disputed Acts, the Lawsuit or the SOLAR-E/A Agreements, WCF agrees to indemnify, defend and hold the Capitol Parties harmless on any such claim.~~

25. Costs. All parties shall bear their own attorneys' fees and costs.

26. Nondisclosure. Except in connection with the Court approval of this Agreement, the Warner Parties and the Capitol Parties agree that they will not disclose the terms of this Agreement to third parties except SOLAR, without the

written consent of the parties to this Agreement. The parties hereto may disclose only the fact that a settlement has been reached between the Warner Parties and Capitol Parties. To the extent permitted by the Court, all papers and proceedings shall be filed under seal.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

APPROVED AS TO FORM:

TUTTLE & TAYLOR Incorporated

CAPITOL INDUSTRIES-EMI, INC.

By \_\_\_\_\_  
Mark A. Borenstein  
Attorneys for Capitol  
Industries-EMI, Inc. and  
Capitol Records, Inc.

By \_\_\_\_\_  
CAPITOL RECORDS, INC.

By \_\_\_\_\_  
Address:

A.  
RUDIN AND APPEL, P.C.  
MILTON RUDIN  
JOSEPH GOLDEN  
L.

WARNER COMMUNICATIONS, INC.

By \_\_\_\_\_  
Milton Rudin  
Attorneys for Warner  
Communications, Inc. and  
Elektra/Asylum/Nonesuch  
Records, a Division of  
Warner Communications, Inc.

By \_\_\_\_\_  
ELEKTRA/ASYLUM/NONESUCH RECORDS,  
a Division of Warner  
Communications, Inc.

By \_\_\_\_\_  
Address: