SESSION 1
PROFESSIONALISM

28th Cutting Edge Entertainment Law Seminar

The Pandemic REDUX

LIVE and Online

Code of Professionalism

The legal profession is a learned calling. As such, lawyers should act with honesty and integrity and be mindful of our responsibility to the judicial system, the public, our colleagues, and the rule of law. We, as lawyers, should always aspire to the highest ideals of our profession.

- MY WORD is my bond.
- I WILL conduct myself with honesty, dignity, civility, courtesy and fairness and will not engage in any demeaning or derogatory actions or commentary toward others.
- I WILL NOT knowingly make statements of fact or law that are untrue or misleading and I will clearly identify for other counsel changes I have made in documents submitted to me.
- I WILL be punctual in my communication with clients, other counsel and the court. I will honor scheduled appearances and will cooperate with other counsel in all respects.
- I WILL allow counsel fair opportunity to respond and will grant reasonable requests for extensions of time.
- I WILL NOT abuse or misuse the law, its procedures or the participants in the judicial process.
- I WILL cooperate with counsel and the court to reduce the cost of litigation and will not file or oppose pleadings, conduct discovery or utilize any course of conduct for the purpose of undue delay or harassment of any other counsel or party.
- I WILL NOT engage in personal attacks on other counsel or the court or use the threat of sanctions as a litigation tactic.
- I WILL support my profession's efforts to enforce its disciplinary rules and will not make unfounded allegations of unethical conduct about other counsel.
- I WILL work to protect and improve the image of the legal profession in the eyes of the public.
- I WILL endeavor to improve our system of justice.
- I WILL use technology, including social media, responsibly. My words and actions, no matter how conveyed, should reflect the professionalism expected of me as a lawyer.
- I WILL seek opportunities to be of service to the bench and bar and assist those who cannot afford legal help.
- I WILL be supportive of new members in the profession.
- I WILL stay informed about changes in the law, communication, and technology which affect the practice of law.

Following approval by the Louisiana State Bar Association House of Delegates and the Board of Governors at the Midyear Meeting, and approval by the Supreme Court of Louisiana on Jan. 10, 1992, the Code of Professionalism was adopted for the membership. This revised Code, a product of the LSBA Committee on the Profession, was approved by the LSBA HOD in January 2018 and approved by the LA Supreme Court in March 2018.

Louisiana State Bar Association

Serving the Public. Serving the Profession.

CUTTING EDGE ENTERTAINMENT LAW CONFERENCE
August 22-24th, 2019

Attorney Ethics and Professionalism-CLE OUTLINE: Professionalism and the Ornery Opponent:

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Dedicated to Vernon P. Thomas, Esq., a truly great man.

OUTLINE

I. Some Louisiana Supreme Court disciplinary cases- August 2018 - July 2019
II. Pertinent Disciplinary Rules
III. Professional Rules Governing Escrow Accounts

TEXT

I. Some Louisiana Supreme Court disciplinary cases- August 2018 - July 2019

"IN RE: M G. S
NO. 2019-B-0908
SUPREME COURT OF LOUISIANA
June 26, 2019..." In re S (La., 2019)

Motion filed by the Office of Disciplinary Counsel ("ODC") against respondent, M G. S. The motion seeks to revoke respondent's probation and make the previously-deferred portion of his suspension executory based on allegations that respondent failed to comply with the conditions of probation imposed in In re: S, 17-1043 (La. 10/16/17), 226 So. 3d 1102 ("S I").

The record in S I demonstrated that respondent mismanaged his client trust account, neglected a legal matter, failed to communicate with a client, and failed to cooperate with the ODC in two

investigations. For this misconduct, the court suspended respondent from the practice of law for one year and one day, with all but sixty days deferred, followed by a two-year period of supervised probation with the following conditions: (1) respondent shall successfully complete Trust Accounting School; (2) respondent shall successfully complete Ethics School; and:

(3) respondent shall provide the ODC with quarterly audits of his client trust account.

The ODC alleged that respondent failed to submit quarterly audits of his client trust account, as required by his probation agreement.

After a hearing, at which respondent failed to appear, the disciplinary board concluded that respondent failed to comply with the terms and conditions of his probation by failing to provide the ODC with the name of a CPA for approval and by failing to provide any quarterly audits of his client trust account as required by the court's order in S I a.

"DECREE

For the reasons assigned, respondent's probation is revoked and the previously-deferred portion of the one year and one day suspension imposed in In re: S, 17-1043 (La. 10/16/17), 226 So. 3d 1102, is hereby made immediately executory." In re S (La., 2019)

"IN RE: P. G.
NO. 2018-B-1646
SUPREME COURT OF LOUISIANA
June 26, 2019
ATTORNEY DISCIPLINARY PROCEEDING..." In re G (La., 2019)

"On February 3, 2016, the ODC received an overdraft notice regarding a November 23, 2015 overdraft in respondent's client trust account. The overdraft resulted from respondent's attempt to pay a third-party medical provider for services rendered to a client who had no funds in the trust account." In re G (La., 2019)

Thereafter, the ODC's forensic auditor conducted an audit of respondent's trust account for the period of August 1, 2015 through January 31, 2016. The audit revealed that respondent regularly paid non-client expenses and made cash withdrawals from his trust account; these non-client expenses and cash withdrawals totaled $33,219.33 during the audit period. The audit also revealed that, on January 31, 2016, the trust account balance to satisfy pending client expenditures should have been at least $16,345.62. Instead, the balance on that date was $3,235.61, resulting in a deficit of $13,110.01.

On March 17, 2016, respondent informed the ODC that he was addicted to OxyContin, explaining that "the cost of the medication coupled with its effects on me overwhelmed my finances and I eventually began to take money from my Trust account." He also informed the

ODC that he had contacted the Judges and Lawyers Assistance Program ("JLAP") and was preparing to enter inpatient treatment. He further informed the ODC that "I have also gone through my files and paid all outstanding debts that had been previously withheld from client settlements." This last statement was confirmed by the ODC's audit of respondent's trust account. Finally, during his October 26, 2016 sworn statement to the ODC, respondent admitted that he regularly used his trust account as a second operating account in 2015.

On July 7, 2016, respondent completed a ninety-day inpatient treatment program at Palmetto Addiction Recovery Center. Palmetto's medical director diagnosed respondent with severe opioid use disorder, among other diagnoses. On July 12, 2016, respondent signed a five-year JLAP recovery agreement.

Regarding mitigating factors, the committee noted that the ODC had stipulated to the following: absence of a prior disciplinary record, timely good faith effort to make restitution or to rectify the consequences of the misconduct, and full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings.

In light of the above findings, the committee recommended respondent be suspended from the practice of law for one year and one day, fully deferred, subject to the following conditions:...

1. Respondent shall continue to be bound by the terms of his JLAP recovery agreement for at least two years;

2. Respondent shall obtain regular audits of his trust account, to be performed by a CPA approved by the ODC;

3. Respondent shall submit the findings of the audits on a quarterly basis to the ODC for two years;

4. Respondent shall take at least six hours of continuing legal education in the area of law office practice/client trust account management; and

5. Respondent shall successfully complete the Louisiana State Bar Association's Trust Accounting School within one year.

The ODC objected to the leniency of the committee's recommended sanction, arguing that the period of deferment is not supported by the record.

"The board recognized the sole aggravating factor of multiple offenses." In re Giraud (La., 2019) "Based on this reasoning, we will suspend respondent from the practice of law for one year and one day, with all but six months deferred, subject to two years of probation with the conditions set forth in the board's report,..."

IN RE: J F. O, JR.
NO. 2019-OB-0985
SUPREME COURT OF LOUISIANA
June 26, 2019

ORDER

The Office of Disciplinary Counsel ("ODC") filed formal charges against respondent, alleging that he failed to file federal tax returns on behalf of his law firm and failed to remit funds withheld from his employees' paychecks to the federal government. Respondent now seeks to permanently resign from the practice of law in lieu of discipline. The ODC has concurred in respondent's petition.

IT IS FURTHER ORDERED that J F. O. Jr. shall be permanently prohibited from practicing law in Louisiana or in any other jurisdiction in which he is admitted to the practice of law; shall be permanently prohibited from seeking readmission to the practice of law in this state or in any other jurisdiction in which he is admitted; and shall be permanently prohibited from seeking admission to the practice of law in any jurisdiction.

IN RE: T A. H
NO. 2019-B-0827
SUPREME COURT OF LOUISIANA
June 17, 2019
ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

Respondent, T A. H, was arrested for alcohol-related misconduct on four occasions, three of which involved driving while intoxicated. For this misconduct, we accepted a joint petition for consent discipline filed by respondent and the Office of Disciplinary Counsel ("ODC") and suspended respondent for a period of one year and one day, with all but six months deferred, subject to a period of probation to coincide with respondent's recovery agreement with the Judges and Lawyers Assistance Program ("JLAP").1 In re: H, 17-0726 (La. 9/15/17), 224 So. 3d 963

IN RE: A D P
NO. 2019-B-0901

SUPREME COURT OF LOUISIANA
June 17, 2019
ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

The Office of Disciplinary Counsel ("ODC") commenced an investigation into allegations that respondent neglected a legal matter, failed to communicate with a client, and engaged in a personal relationship with a current client. Following the filing of formal charges, respondent and the ODC submitted a joint petition for consent discipline in which respondent admitted that his conduct violated Rules 1.3, 1.4(a)(3), 1.7, and 8.4(a) of the Rules of Professional Conduct. Having reviewed the petition,

IT IS ORDERED that the Petition for Consent Discipline be accepted and that A D P, Louisiana Bar Roll number 25815, be and he hereby is suspended from the practice of law for a period of one year.

IT IS FURTHER ORDERED that all costs and expenses in the matter are assessed against respondent in accordance with Supreme Court Rule XIX, § 10.1, with legal interest to commence thirty days from the date of finality of this court's judgment until paid.

IN RE: K L J
No. 2019-B-0653
SUPREME COURT OF LOUISIANA
June 3, 2019
ATTORNEY DISCIPLINARY PROCEEDING

Crichton, J., would reject the petition for consent discipline.

I dissent from the per curiam, because, in my view, the discipline of one year and one day, with only thirty days deferred, is too lenient. Respondent herself stipulated that she as grossly negligent in the mismanagement of her client trust account. Further, I find respondent's failures to respond the Office of Disciplinary Counsel in its investigations of that mismanagement to be egregious.

With respect to Count I, Respondent initially failed to respond to the ODC's notice of a June 2017 overdraft of her client trust account. After ODC issued a formal complaint, respondent submitted a request for an extension of time to respond, but the account was again overdrawn. She was then sent notice of the second overdraft, but failed to respond to that notice, requiring the ODC to send a second request for a response. At that point, by now months later in October 2017, respondent again requested another extension of time. The ODC granted her that courtesy, but she again failed to respond. After a third request for a response from the ODC, respondent provided some materials, but it was incomplete. Thus, ODC had to request additional documentation, leading to a similar circle of events in which respondent again requested additional time, which was granted by ODC, but did not submit the supplemental materials.

IN RE: G C
NO. 2019-B-0406
SUPREME COURT OF LOUISIANA

June 3, 2019
ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

Respondent, G C, engaged in a conflict of interest. For this misconduct, we suspended respondent for a period of six months, with all but thirty days deferred, subject to one year of unsupervised probation. In re: C, 18-1076 (La. 12/5/18), 2018 WL 6390368 ("C I"). Respondent did not file a request for a rehearing, and the order of suspension became final and effective on December 20, 2018. In the instant matter, the Office of Disciplinary Counsel ("ODC") seeks to make the deferred suspension executory, based upon allegations that respondent engaged in the unauthorized practice of law during his suspension and made false representations in his affidavit for reinstatement.

UNDERLYING FACTS AND PROCEDURAL HISTORY

On February 8, 2019, respondent telephoned the ODC to discuss his probation. Both during this telephone call and thereafter in writing, respondent admitted that he regularly engaged in the practice of law after the effective date of his suspension.

The ODC has verified numerous actions taken by respondent during his suspension which constitute the practice of law:...

We agree that these circumstances constitute misconduct. Although the ODC has requested that that the previously-deferred portion of the suspension be made executory, we find no evidence that respondent has served any part of the active portion of his suspension. To the contrary, the record reveals respondent continued to practice law between the finality of our decree on December 20, 2018 through January 31, 2019. Accordingly, we will make the entire six-month suspension imposed in C I immediately executory, to commence from the date of this decree.

WHAT WAS THE CONFLICT OF INTEREST?:

IN RE: G C
NO. 2018-B-1076
SUPREME COURT OF LOUISIANA
December 5, 2018
ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel ("ODC") against respondent, G C, an attorney licensed to practice law in Louisiana.

UNDERLYING FACTS

In February 2016, Cedric Duncan and his sisters, Pamelian Norwood and Angela Freeman, hired respondent to handle the succession of their mother, Ethel Duncan, who died intestate on February 11, 2016. Respondent charged a flat fee of $1,800, and the siblings agreed to split the fee three ways. Respondent was paid the entire $1,800 and provided Cedric with a receipt for $600. Nevertheless, respondent claimed he never received any money directly from Cedric, asserting that Angela paid Cedric's portion of the fee.

The petition for possession respondent prepared and filed excluded Cedric as an heir to Ethel's estate. Respondent claimed Pamelian and Angela told him Cedric no longer wished to be a part of the succession. However, respondent never verified this with Cedric. In June 2016, the judge signed the judgment of possession splitting Ethel's property equally between Pamelian and Angela.

When Cedric received a copy of the judgment of possession, he hired attorney Kristina Shapiro to reopen the succession, paying her $3,000 for the representation.

Ms. Shapiro filed a petition to annul the judgment of possession and for damages, naming Pamelian, Angela, and respondent as defendants. Ms. Shapiro also filed a motion to reopen the succession.

Respondent filed an answer to the petition to annul the judgment of possession and for damages on behalf of Pamelian, Angela, and himself. Respondent also appeared at the December 1, 2016 hearing to reopen the succession and argued on behalf of Pamelian and Angela. The judge reopened the succession and named Cedric as the administrator. Shortly thereafter, respondent withdrew from the representation of Pamelian and Angela.

[See Disciplinary Proceedings in this case above]

IN RE: C J. W
NO. 2019-B-0663
SUPREME COURT OF LOUISIANA
June 3, 2019
ATTORNEY DISCIPLINARY PROCEEDINGS

PER CURIAM

The Office of Disciplinary Counsel ("ODC") commenced an investigation into allegations that respondent committed serious attorney misconduct, including neglect of his clients' legal matters, failure to communicate with his clients, failure to refund unearned fees, failure to placed advanced deposits for costs and expenses into his client trust account, and failure to return his clients' files upon the termination of the representation. Respondent also practiced law while he was ineligible to do so, failed to cooperate with the ODC in its investigation, and was charged with issuing worthless checks. Following the filing of formal charges, respondent and the ODC submitted a joint petition for consent discipline. Having reviewed the petition,

IT IS ORDERED that the Petition for Consent Discipline be accepted and that C J. W, Louisiana Bar Roll number 29017, be suspended from the practice of law for a period of three years, which suspension commences from the effective date of this order.

IT IS FURTHER ORDERED that respondent shall make full restitution to all clients to whom refunds are owed.

IT IS FURTHER ORDERED that all costs and expenses in the matter are assessed against respondent..

IN RE: M. F
NO. 2018-B-1483
SUPREME COURT OF LOUISIANA
May 28, 2019
ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

Pursuant to Supreme Court Rule XIX, § 21, the Office of Disciplinary Counsel ("ODC") has filed a petition seeking the imposition of reciprocal discipline against respondent, M R. F, an attorney licensed to practice law in Louisiana, Tennessee, and Colorado, based upon discipline imposed by the Supreme Court of Colorado.

UNDERLYING FACTS AND PROCEDURAL HISTORY

In 1987, respondent maintained a law office in Denver, Colorado, wherein he accepted new legal cases and collected retainers until October 21, 1987. On October 23, 1987, respondent essentially abandoned his law practice when he moved to Ireland without notice to most of his clients. Thereafter, respondent failed to file his 1988 annual registration statement or pay the $90 registration fee.

Seven of respondent's clients filed grievances with the Colorado Disciplinary Counsel. Respondent failed to appear and answer a multiple count disciplinary complaint. The Supreme Court of Colorado ultimately found that respondent abandoned his law practice, converted his clients' funds to his own use, and failed to cooperate in the disciplinary proceedings. For this misconduct, the Supreme Court of Colorado disbarred1 respondent and ordered him to make restitution to the seven clients in the total amount of $14,750.36.

After receiving notice of the Colorado order of discipline on January 27, 2017, the ODC filed a motion to initiate reciprocal discipline proceedings in Louisiana, pursuant to Supreme Court Rule XIX, § 21. A copy of the Final Judgment and Order issued by the Supreme Court of Colorado was attached to the motion.

On September 7, 2018, this court rendered an order giving respondent thirty days to demonstrate why the imposition of identical discipline in this state would be unwarranted. Respondent did not file a response to the court's order.

DISCUSSION

The standard for imposition of discipline on a reciprocal basis is set forth in Supreme Court Rule XIX, § 21(D). That rule provides:

> Discipline to be Imposed. Upon the expiration of thirty days from service of the notice pursuant to the provisions of paragraph B, this court shall impose the identical discipline ... unless disciplinary counsel or the lawyer demonstrates, or this court finds that it clearly appears upon the face of the record from which the discipline is predicated, that:
>
> (1) The procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
> (2) Based on the record created by the jurisdiction that imposed the discipline, there was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the court could not, consistent with its duty, accept as final the conclusion on that subject; or
> (3) The imposition of the same discipline by the court would result in grave injustice or be offensive to the public policy of the jurisdiction; or
> (4) The misconduct established warrants substantially different discipline in this state;
> If this court determines that any of those elements exists, this court shall enter such other order as it deems appropriate. The burden is on the party seeking different discipline in this jurisdiction to demonstrate that the imposition of the same discipline is not appropriate.

In the instant case, respondent has made no showing of infirmities in the Colorado proceeding, nor do we discern any from our review of the record. Furthermore, we find there is no reason to deviate from the sanction imposed in Colorado as only under extraordinary circumstances should there be a significant variance from the sanction imposed by the other jurisdiction. In re: Aulston, 05-1546 (La. 1/13/06), 918 So. 2d 461. See also In re Zdravkovich, 831 A.2d 964, 968-69 (D.C. 2003) ("there is merit in according deference, for its own sake, to the actions of other jurisdictions with respect to the attorneys over whom we share supervisory authority").

Under these circumstances, it is appropriate to defer to the Colorado judgment imposing discipline upon respondent. Accordingly, we will impose reciprocal discipline in the form of disbarment.

Footnotes:

1. According to the Colorado Rules of Civil Procedure, Rule 251.6(a), disbarment is the revocation of an attorney's license to practice law in the state for at least eight years, subject to readmission as provided by Rule 251.29(a), which provides in pertinent part that "[a] disbarred attorney may not apply for readmission until at least eight years after the effective date of the

order of disbarment."...
In re Franks (La., 2019)

BAR FORGIVENESS IS POSSIBLE:

IN RE: S J. H
NO. 2019-OB-0459
SUPREME COURT OF LOUISIANA
May 20, 2019
ON APPLICATION FOR REINSTATEMENT

PER CURIAM

This proceeding arises out of an application for reinstatement to the practice of law filed by petitioner, S J. H, a suspended attorney.

UNDERLYING FACTS AND PROCEDURAL HISTORY

In May 2001, petitioner was arrested and charged with driving while intoxicated ("DWI"), speeding, and improper lane usage. Ultimately, the DWI charge was dismissed, and petitioner pleaded guilty to the traffic charges.

In September 2001, petitioner vandalized a truck belonging to his ex-wife's boyfriend while it was parked at his ex-wife's home. He was arrested and charged with simple criminal damage to property and violation of a restraining order. He was also cited for failure to yield to an emergency vehicle for refusing to stop his car when the police ordered him to do so.

In December 2002, petitioner was arrested and charged with DWI second offense, hit and run, disobeying a red light, reckless driving, and failing to maintain proof of insurance. In February 2005, petitioner pleaded guilty to failing to report an accident, disobeying a red light, and reckless driving. In June 2005, the record of petitioner's arrest was expunged.

In June 2005, petitioner gave a sworn statement to the Office of Disciplinary Counsel ("ODC") regarding the three matters set forth above. In response to the ODC's questions, petitioner asserted his Fifth Amendment privilege against self-incrimination. The ODC insisted that he answer on the ground that all criminal charges against him had either been declined or resolved via plea agreement. Nevertheless, petitioner continued to refuse to answer, thereby failing to cooperate with the ODC's investigation.

For the above misconduct, we suspended petitioner from the practice of law for three years. In re: H, 09-0116 (La. 6/26/09), 15 So. 3d 82.

In June 2015, petitioner pleaded no contest to domestic abuse battery. In May 2016, we

accepted a joint petition for consent discipline filed by petitioner and the ODC and suspended petitioner from the practice of law for one year. In re: H, 16-0686 (La. 5/27/16), 193 So. 3d 124.

In August 2018, petitioner filed an application for reinstatement with the disciplinary board, alleging he has complied with the reinstatement criteria set forth in Supreme Court Rule XIX, § 24(E). The ODC took no position regarding the application for reinstatement. Accordingly, the matter was referred for a formal hearing before a hearing committee.

Following the hearing, the hearing committee recommended that petitioner be reinstated to the practice of law on a conditional basis for one year, subject to the following conditions:

1. Petitioner shall continue diagnostic monitoring with JLAP during the one-year probationary period. If his JLAP diagnostic monitoring agreement terminates by its own terms during the probationary period, then he shall execute a new agreement to satisfy this condition;

2. Petitioner shall maintain good standing pursuant to his JLAP agreement;

3. Petitioner shall maintain compliance with the Rules of Professional Conduct;

4. Petitioner shall cooperate with the ODC in the event of an inquiry as to his fitness to practice law; and

5. Petitioner shall satisfy all requirements to practice law pursuant to the rules governing attorneys in the State of Louisiana.

Neither petitioner nor the ODC objected to the hearing committee's recommendation.

DISCUSSION

After considering the record in its entirety, we find petitioner has met his burden of proving that he is entitled to be reinstated to the practice of law on a conditional basis. Accordingly, we will order that petitioner be reinstated to the practice of law, subject to a one-year period of probation governed by all of the conditions recommended by the hearing committee.
In re H (La., 2019)

IN RE: Y J K
NO. 2019-B-0356
SUPREME COURT OF LOUISIANA
May 20, 2019
ATTORNEY DISCIPLINARY PROCEEDING

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel ("ODC") against respondent, Y J K, an attorney licensed to practice law in Louisiana

but currently on interim suspension based upon her conviction of a serious crime. In re: K, 16-0331 (La. 3/14/16), 186 So. 3d 649 (Johnson, C.J., recused).

UNDERLYING FACTS

In February 2013, respondent qualified to run for Orleans Parish Juvenile Court, representing in her qualifying documents that she was domiciled in Orleans Parish. Respondent subsequently prevailed in a runoff election. In March 2014, a grand jury in Orleans Parish indicted respondent on two felony criminal charges arising out of allegations that she was actually domiciled in St. Tammany Parish and that she made false representations about her domicile when she qualified to run for judicial office.

Following the indictment, this court disqualified respondent from exercising any judicial function during the pendency of further proceedings. In re: K, 14-0924 (La. 5/15/14), 140 So. 3d 711 (Johnson, C.J., recused). Prior to a final adjudication of the judicial discipline matter against respondent, she lost the status of a judge when she was defeated in the fall 2014 elections. As a result, the ODC assumed jurisdiction over respondent.

In November 2015, a jury found respondent guilty of both counts of the indictment. She was sentenced in February 2016 to a suspended jail sentence and probation.

Thereafter, respondent filed a motion for an out of time appeal of her criminal conviction, which motion was granted. The court of appeal then remanded the case to the trial court with instructions to conduct an evidentiary hearing on a claim of ineffective assistance of counsel. State v. K, 17-0123 (La. App. 4th Cir. 10/27/17), 231 So. 3d 110.

Following remand, on December 18, 2017, respondent entered into a plea agreement, whereby the original convictions were vacated. In exchange, respondent pleaded guilty to a misdemeanor violation of La. R.S. 18:1461.3(C)(4) (disobeying any lawful instruction of a registrar, deputy registrar, or commissioner).1

DISCIPLINARY PROCEEDINGS

In March 2016, the ODC filed formal charges against respondent, alleging that her conduct violated the following provisions of the Rules of Professional Conduct: Rules 8.4(a) (violation of the Rules of Professional Conduct), 8.4(b)

(commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

Respondent initially failed to answer the formal charges, and the factual allegations contained therein were deemed admitted and proven by clear and convincing evidence. Eight months later, respondent, through counsel, filed an unopposed motion to recall the deemed

admitted order. She also sought a stay of the formal charge proceedings pending her criminal appeal. The motion and request for a stay were granted, and the deemed admitted order was recalled.
In re K (La., 2019)

In her submission, respondent indicated that she is the sole caregiver for her eighty-eight year old mother and fifty-six year old brother, both of whom are disabled and in need of constant care. After respondent's sister passed away in November 2015, respondent moved to Atlanta, Georgia to take care of them. In May 2018, respondent was forced to move with them back to Louisiana due to financial hardship. During the process, they have been without any home healthcare or transportation assistance services.

Respondent argued that she possesses good character and reputation. In support, she submitted three character reference letters as well as a transcript of her deposition, wherein she testified about her lifetime involvement in church and volunteer work with various juvenile agencies.

Respondent suggested that this matter is guided by the court's ruling in In re: Richmond, 08-0742 (La. 12/2/08), 996 So. 2d 282, wherein an attorney was found to have knowingly made false statements under oath regarding his domicile when he qualified as a candidate for public office. For his misconduct, the court suspended the attorney for six months, and in light of the mitigating factors present, deferred all but sixty days of the suspension. Respondent indicated that a similar sanction would be appropriate here, although, unlike Mr. Richmond, respondent did not occupy a position of public trust at the time of her conduct.2 Respondent requested that any sanction be made retroactive to the date of her interim suspension, and requested that all costs and expenses associated with this proceeding be waived as she has been unemployed since December 2015.

In its submission on sanction, the ODC indicated that it could not stipulate to the presence of "personal problems" as a mitigating factor, inasmuch as there appeared to be no correlation between the acts of dishonesty by respondent in falsifying her domicile in the qualifying process and her mother's health problems and her brother's care needs. The ODC agreed that this matter is guided by Richmond, but noted that unlike respondent, Mr. Richmond was not criminally prosecuted for his conduct. The ODC suggested that respondent be suspended from the practice of law for one year, retroactive to the date of her interim suspension.

Hearing Committee Report

After considering the record, the hearing committee made factual findings consistent with the underlying facts set forth above. Based on those facts, the committee determined respondent violated the Rules of Professional Conduct as alleged in the formal charges.

The committee determined that respondent violated duties owed to the public of this State. Her actions were knowing and intentional when she falsified her domicile in an attempt to be

elected as a juvenile court judge in Orleans Parish. Her actions caused harm to the public's trust in individuals seeking a position such as a judgeship. Respondent admitted that her behavior caused an undue burden on the legal system and shed a "negative light on the judiciary and legal profession." After considering the ABA's Standards for Imposing Lawyer Sanctions, the committee determined the baseline sanction is suspension.

Upon review of the findings and recommendations of the hearing committee and disciplinary board, and considering the record, it is ordered that Y J K, Louisiana Bar Roll number 22096, be and she hereby is suspended from the practice of law for a period of one year, retroactive to March 14, 2016, the date of her interim suspension.

II. Pertinent Disciplinary Rules:

A. Louisiana Rules of Professional Conduct With amendments through July1, 2016:

Rule 1.15.
Safekeeping Property
(a)
A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. ...*[holding of client funds, see III, Escrow Section, below...]*... Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

Rule 3.2.
Expediting Litigation
A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Rule 3.4.
Fairness to Opposing Party and Counsel
A lawyer shall not:
(a)
unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;
(b)
falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
(c)

knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists;
(d)
in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;
(e)
in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or
(f)
request a person other than a client to refrain from voluntarily giving relevant information to another party unless:
(1)
the person is a relative or an employee or other agent of a client, and
(2)
the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

Rule 4.1.
Truthfulness in Statements to Others
In the course of representing a client a lawyer shall not knowingly:
(a)
make a false statement of material fact or law to a third person; or
(b)
fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

Rule 8.4.
Misconduct
It is professional misconduct for a lawyer to:
(a)
Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
(b)
Commit a criminal act especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
(c)
Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
(d)
Engage in conduct that is prejudicial to the administration of justice;
(e)
State or imply an ability to influence improperly a judge, judicial officer, governmental

agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;
(f)
Knowingly assist a judge or judicial officer in conduct that is a violation of applicable Rules of Judicial Conduct or other law; or
(g) Threaten to present criminal or disciplinary charges solely to obtain an advantage in a civil matter.

III. Professional Rules Governing Escrow Accounts:

A. Louisiana Rules of Professional Conduct With amendments through July1, 2016:

Rule 1.15.
Safekeeping Property
(a)
A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Except as provided in (g) and the IOLTA Rules below, funds shall be kept in one or more separate interest bearing client trust accounts maintained in a bank or savings and loan association: 1) authorized by federal or state law to do business in Louisiana, the deposits of which are insured by an agency of the federal government; 2) in the state where the lawyer's primary office is situated, if not within Louisiana; or 3) elsewhere with the consent of the client or third person. No earnings on a client trust account may be made available to or utilized by a lawyer or law firm. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.
(b)
A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account or obtaining a waiver of those charges, but only in an amount necessary for that purpose.
(c)
A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred. The lawyer shall deposit legal fees and expenses into the client trust account consistent with Rule 1.5(f).
(d)
Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. For purposes of this rule,
the third person's interest shall be one of which the lawyer has actual knowledge, and shall be limited to a statutory lien or privilege, a final judgment addressing disposition of those

funds or property, or a written agreement by the client or the lawyer on behalf of the client guaranteeing payment out of those funds or property. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly liver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e)

When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(f)

Every check, draft, electronic transfer, or other withdrawal instrument or authorization from a client trust account shall be personally signed by a lawyer or, in the case of electronic, telephone, or wire transfer, from a client trust account, directed by a lawyer or, in the case of a law firm, one or more lawyers authorized by the law firm. A lawyer shall not use any debit card or automated teller machine card to withdraw funds from a client trust account. On client trust accounts, cash withdrawals and checks made payable to "Cash" are prohibited.

A lawyer shall subject all client trust accounts to a reconciliation process at least quarterly, and shall maintain records of the reconciliation as mandated by this rule.

[Last sentence added 1/13/2015 and effective 4/1/2015]

(g)

A lawyer shall create and maintain an "IOLTA Account," which is a pooled interest bearing client trust account for funds of clients or third persons which are nominal in amount or to be held for such a short period of time that the funds would not be expected to earn income for the client or third person in excess of the costs incurred to secure such income.

(1)

IOLTA Accounts shall be of a type approved and authorized by the Louisiana Bar Foundation and maintained only in "eligible" financial institutions, as approved and certified by the Louisiana Bar Foundation. The Louisiana Bar Foundation shall establish regulations, subject to approval by the Supreme Court of Louisiana, governing the determination that a financial institution is eligible to hold IOLTA Accounts and shall at least annually publish a list of LBF approved/certified eligible financial institutions. Participation in the IOLTA program is voluntary for financial institutions. IOLTA Accounts shall be established at a bank or savings and loan association authorized by federal or state law to do business in Louisiana, the deposits of which are insured by an agency of the federal government or at an open end investment company registered with the Securities and Exchange Commission authorized by federal or state law to do business in Louisiana which shall be invested solely in or fully collateralized by U.S. Government Securities with total assets of at least $250,000,000 and in order for a financial institution to be approved and certified by the Louisiana Bar Foundation as eligible, shall comply with the following provisions:

(A)

No earnings from such an account shall be made available to a lawyer or law firm.
(B)
Such account shall include all funds of clients or third persons which are nominal in amount or to be held for such a short period of time the funds would not be expected to earn income for the client or third person in excess of the costs incurred to secure such income.
(C)
Funds in each interest bearing client trust account shall be subject to withdrawal upon request and without delay, except as permitted by law.
(2)
To be approved and certified by the Louisiana Bar Foundation as eligible, financial institutions shall maintain IOLTA Accounts which pay an interest rate comparable to the highest interest rate or dividend generally available from the institution to its non-IOLTA customers when IOLTA Accounts meet or exceed the same minimum balance or other eligibility qualifications, if any. In determining the highest interest rate or dividend generally available from the institution to its non IOLTA accounts, eligible institutions may consider factors, in addition to the IOLTA Account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that such factors do not discriminate between IOLTA Accounts and accounts of non IOLTA customers, and that these factors do not include that the account is an IOLTA Account. The eligible institution shall calculate interest and dividends in accordance with its standard practice for non IOLTA customers, but the eligible institution may elect to pay a higher interest or dividend rate on IOLTA Accounts.
(3)
To be approved and certified by the Louisiana Bar Foundation as eligible, a financial institution may achieve rate comparability required in (g)(2) by:
(A)
Establishing the IOLTA Account as:
(1) an interest bearing checking account; (2) a money market deposit account with or tied to checking; (3) a sweep account which is a money market fund or daily (overnight) financial institution repurchase agreement invested solely in or fully collateralized by U.S. Government Securities; or (4) an open end money market fund solely invested in or fully collateralized by U.S. Government Securities. A daily financial institution repurchase agreement may be established only with an eligible institution that is “well capitalized” or “adequately capitalized” as those terms are defined by applicable federal statutes and regulations. An open end money market fund must be invested solely in U.S. Government Securities or repurchase agreements fully collateralized by U.S. Government Securities, must hold itself out as a “money market fund” as that term is defined by federal statutes and regulations under the Investment Company Act of 1940, and, at the time of the investment, must have total assets of at least $250,000,000. “U.S. Government Securities” refers to U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest by the United

States or any agency or instrumentality thereof.

(B)

Paying the comparable rate on the IOLTA checking account in lieu of establishing the IOLTA Account as the higher rate product; or

(C)

Paying a "benchmark" amount of qualifying funds equal to 60% of the Federal Fund Target Rate as of the first business day of the quarter or other IOLTA remitting period; no fees may be deducted from this amount which is deemed already to be net of "allowable reasonable fees."

(4)

Lawyers or law firms depositing the funds of clients or third persons in an IOLTA Account shall direct the depository institution:

(A)

To remit interest or dividends, net of any allowable reasonable fees on the average monthly balance in the account, or as otherwise computed in accordance with an eligible institution's standard accounting practice, at least quarterly, to the Louisiana Bar Foundation, Inc.;

(B)

To transmit with each remittance to the Foundation, a statement, on a form approved by the LBF, showing the name of the lawyer or law firm for whom the remittance is sent and for each account: the rate of interest or dividend applied; the amount of interest or dividends earned; the types of fees deducted, if any; and the average account balance for each account for each month of the period in which the report is made; and

(C)

To transmit to the depositing lawyer or law firm a report in accordance with normal procedures for reporting to its depositors.

(5)

"Allowable reasonable fees" for IOLTA Accounts are: per check charges; per deposit charges; a fee in lieu of minimum balance; sweep fees and a reasonable IOLTA Account administrative fee. All other fees are the responsibility of, and may be charged to, the lawyer or law firm maintaining the IOLTA Account. Fees or service charges that are not "allowable reasonable fees" include, but are not limited to: the cost of check printing; deposit stamps; NSF charges; collection charges; wire transfers; and fees for cash management. Fees or charges in excess of the earnings accrued on the account for any month or quarter shall not be taken from earnings accrued on other IOLTA Accounts or from the principal of the account. Eligible financial institutions may elect to waive any or all fees on IOLTA Accounts.

(6)

A lawyer is not required independently to determine whether an interest rate is comparable to the highest rate or dividend generally available and shall be in presumptive compliance with Rule 1.15(g) by maintaining a client trust account of the type approved and authorized by the Louisiana Bar Foundation at an "eligible" financial institution.

(7)

“Unidentified Funds” are funds on deposit in an IOLTA account for at least one year that after reasonable due diligence cannot be documented as belonging to a client, a third person, or the lawyer or law firm.

(h)

A lawyer who learns of Unidentified Funds in an IOLTA account must remit the funds to the Louisiana Bar Foundation. No charge of misconduct shall attend to a lawyer’s exercise of reasonable judgment under this paragraph (h).

A lawyer who either remits funds in error or later ascertains the ownership of remitted funds may make a claim to the Louisiana Bar Foundation, which after verification of the claim will return the funds to the lawyer.

IOLTA Rules

(1)

The IOLTA program shall be a mandatory program requiring participation by lawyers and law firms, whether proprietorships, partnerships, limited liability companies or professional corporations.

(2)

The following principles shall apply to funds of clients or third persons which are held by lawyers and law firms:

(a)

No earnings on the IOLTA Accounts may be made available to or utilized by a lawyer or law firm.

(b)

Upon the request of, or with the informed consent of a client or third person, a lawyer may deposit funds of the client or third person into a non IOLTA, interest bearing client trust account and earnings may be made available to the client or third person , respectively, whenever possible upon deposited funds which are not nominal in amount or are to be held for a period of time long enough that the funds would be expected to earn income for the client or third person in excess of the costs incurred to secure such income; however, traditional lawyer client relationships do not compel lawyers either to invest such funds or to advise clients or third persons to make their funds productive.

(c)

Funds of clients or third persons which are nominal in amount or to be held for such a short period of time that the funds would not be expected to earn income for the client or third person in excess of the costs incurred to secure such income shall be retained in an IOLTA Account at an eligible financial institution as outlined above in section (g), with the interest or dividend (net of allowable reasonable fees) made payable to the Louisiana Bar Foundation, Inc., said payments to be made at least quarterly.

(d)

In determining whether the funds of a client or third person can earn income in excess of costs, a lawyer or law firm shall consider the following factors:

(1)

The amount of the funds to be deposited;

(2)

The expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held;
(3)
The rates of interest or yield at financial institutions where the funds are to be deposited;
(4)
The cost of establishing and administering non IOLTA accounts for the benefit of the client or third person including service charges, the costs of the lawyer's services, and the costs of preparing any tax reports required for income accruing to the benefit of the client or third person;
(5)
The capability of financial institutions, lawyers or law firms to calculate and pay income to individual clients or third persons;
(6)
Any other circumstances that affect the ability of the funds of the client or third person to earn a positive return for the client or third person. The determination of whether funds to be invested could be utilize
d to provide a positive net return to the client or third person rests in the sound judgment of each lawyer or law firm. The lawyer or law firm shall review its IOLTA Account at reasonable intervals to determine whether changed circumstances require further action with respect to the funds of any client or third person.
(e)
Although notification of a lawyer's participation in the IOLTA Program is not required to be given to clients or third persons whose funds are held in IOLTA Accounts, many lawyers may want to notify their clients or third persons of their participation in the program in some fashion. The Rules do not prohibit a lawyer from advising all clients or third persons of the lawyer's advancing the administration of justice in Louisiana beyond the lawyer's individual abilities in conjunction with other public spirited members of the profession. The placement
of funds of clients or third persons in an IOLTA Account is within the sole discretion of the lawyer in the exercise of the lawyer's independent professional judgment; notice to the client or third person is for informational purposes only.
(3)
The Louisiana Bar Foundation shall hold the entire beneficial interest in the interest or dividend income derived from client trust accounts in the IOLTA program. Interest or dividend earned by the program will be paid to the Louisiana Bar Foundation, Inc. to be used solely for the following purposes:
(a)
to provide legal services to the indigent and to the mentally disabled;
(b)
to provide law related educational programs for the public;
(c)
to study and support improvements to the administration of justice; and
(d)
for such other programs for the benefit of the public and the legal system of the

state as are specifically approved from time to time by the Supreme Court of Louisiana.

(4)

The Louisiana Bar Foundation shall prepare an annual report to the Supreme Court of Louisiana that summarizes IOLTA income, grants, operating expenses and any other problems arising out of administration of the IOLTA program. In addition, the Louisiana Bar Foundation shall also prepare an annual report to the Supreme Court of Louisiana that summarizes all other Foundation income, grants, operating expenses and activities, as well as any other problems which arise out of the Foundation's implementation of its corporate purposes. The Supreme Court of Louisiana shall review, study and analyze such reports and shall make recommendations to the Foundation with respect thereto.

B. Rules for Lawyer Disciplinary Enforcement (Louisiana Supreme Court Rule XIX) With amendments through January 27, 2016

Section 28. Maintenance of Trust Accounts by Lawyers; Access to Lawyers' Financial Account Records; Overdraft Notification.

A. Clearly Identified Trust Accounts in Financial Institutions Required.

(1) Lawyers who practice law in Louisiana shall deposit all funds held in trust in a bank or similar institution in this state, or elsewhere with the consent of the client or third party, in accounts clearly identified as "trust" or "escrow" accounts, referred to herein as "trust accounts," and shall take all steps necessary to inform the depository institution of the purpose and identity of the accounts. Funds held in trust include funds held in any fiduciary capacity in connection with a representation, whether as trustee, agent, guardian, exec
utor or otherwise. Lawyer trust accounts shall be maintained only in financial institutions that execute the agreement described in paragraph D below.

(2) Every lawyer engaged in the practice of law in Louisiana shall maintain and preserve for a period of at least five years, after final disposition of the underlying matter, the records, check stubs, vouchers, ledgers, journals, closing statements, accounts or other statements of disbursements rendered to clients or other parties with regard to trust funds
or similar equivalent records clearly and expressly reflecting the date, amount, source, and explanation for all receipts, withdrawals, deliveries and disbursements of the funds or other property of a client.

B. Access to Lawyers' Financial Account Records.

Every lawyer practicing or admitted to practice law in Louisiana shall, as a condition thereof, be conclusively deemed to have consented to the production by the depository institution of records of all financial accounts maintained by the lawyer in any bank or similar institution, and

the overdraft reporting requirements mandated by this rule.

C. Request for Production of Records.

A request by disciplinary counsel directed to a bank or other financial institution for production of records pursuant to this Section shall certify that the request is issued in accordance with the requirements of this Section and Section 29 of these Rules of Lawyer Disciplinary Enforcement.

D. Overdraft Notification Agreement Required.

A financial institution shall be approved as a depository for lawyer trust accounts if it files with the Board an agreement, in a form provided by the Board and approved by the Court, to report to the Office of Disciplinary Counsel whenever any properly payable instrument is presented against a lawyer trust account containing insufficient funds, irrespective of whether or not the instrument is honored. The Board shall administer securing participation of the financial institutions, and shall annually publish a list of the financial institutions that have executed overdraft notification agreements with the Board. No trust account shall be maintained in any financial institution that does not agree to so report. Any such agreement shall apply to all branches of the financial institution and shall not be cancelled except upon thirty (30) days notice in writing to the Board. Notification of trust or escrow account overdrafts shall be made in accordance with La. R. S. 6:332 and La. R. S. 6:333(F)(16).

Section 29. Verification of Financial Accounts.

A.

Generally.

Whenever disciplinary counsel has probable cause to believe that financial accounts of a lawyer that contain, should contain, or have contained funds belonging to clients or third parties have not been properly maintained or that the funds have not been properly handled, disciplinary counsel shall request the approval of the chair of a hearing committee selected in order from the roster established by the board to initiate an investigation for the purpose of verifying the accuracy and integrity of all accounts maintained by the lawyer in any bank or similar institution. If the reviewing member approves, counsel shall proceed to verify the accuracy of the financial accounts. If the reviewing member denies approval, counsel may submit the request for approval to one other chair of a hearing committee selected in order from the roster established by the board.

B. Confidentiality.

Investigations, examinations, and verifications shall be conducted so as to preserve the private and confidential nature of the lawyer's records insofar as is consistent with these rules and the lawyer client privilege.

Appendix F to Disciplinary Rules: Supreme Court of Louisiana Trust Account Disclosure & Overdraft Notification Authorization

Pursuant to the inherent, plenary and Constitutional authority of the Louisiana Supreme Court to regulate the practice of law, and in accordance with Supreme Court Rule XIX, every attorney

licensed to and engaged in the practice law in Louisiana is required to disclose the existence of a trust or escrow account (or declare that because of the nature of his/her practice that he/she is not required to maintain such an account). Every attorney who maintains a trust or escrow account as required by the Rules of Professional Conduct is required to maintain such account with a federally insured financial institution with whom the attorney has executed an agreement which authorizes the financial institution to provide written or electronic notification to the Office of Disciplinary Counsel of any account overdraft. Use of this form complies with the rules of the Louisiana Supreme Court.

C. From the Trust Account Disclosure & Overdraft Notification Authorization Form:

A. All attorneys holding funds of clients or third persons must maintain a separate account for such funds (commonly referred to a trust or escrow account);

B. Every attorney maintaining a qualified pooled trust or escrow account must participate in the
Interest on Lawyers Trust Account (IOLTA) Program administered by the Louisiana Bar Foundation; and

C. All attorneys who are required to maintain trust or escrow accounts must do so with federally insured financial institutions with which they have executed agreements requiring the financial institutions to provide to the Office of Disciplinary Counsel written or electronic notification of any overdraft incident created on such accounts.

(Notice to Financial Institution:
Pursuant to Legislative Act 249 of the 2005 Regular Session, notice to the Office of Disciplinary Counsel shall be issued after five (5) business days have passed from the date of notice to the attorney, and whether or not the account remains in overdraft status; but such notice will not issue where the overdraft was created solely by bank charges imposed or when charges are imposed through bank error. Costs associated with providing this notice may be charged to the attorney and deducted from the interest created on the trust or escrow account. The act provides that no civil or criminal action may be based upon a disclosure or non-disclosure of financial records made pursuant to the Act.)

SESSION 2
RECORDING AGREEMENTS

28th Cutting Edge Entertainment Law Seminar

The Pandemic REDUX
LIVE and Online

Exclusive Artist Recording Agreement with Independent Record Label

CONTRACT

(*name of record label or production company*)

(*address of record label or production company*)

Dated as of:

(*name of artist*)

(*address of artist*)

Dear (*name of artist*):

This letter shall confirm the material terms of the exclusive production agreement ("Agreement") between (*name of artist*) (hereinafter "ARTIST" or "you"), and (*name of label or production company*) (hereinafter "COMPANY" or "us") as follows:

1. ENGAGEMENT: COMPANY engages ARTIST as its exclusive recording artist and ARTIST agrees, during the Term (as defined below) of this Agreement, to perform exclusively for COMPANY throughout the world ("Territory") for the purpose of making Master Recordings (as defined below) intended for the manufacture and sale of records.

2. TERM:

(a) The "Term" of this Agreement shall commence on the date of this Agreement as set forth above and shall continue, subject to the termination provisions contained in Clauses 15 and 16 below, for an "Initial Period" (defined below). The initial period shall end (*e.g., nine (9) months*) following the date of release of the last recording containing the "Minimum Recording Commitment" (defined below) for the initial Period. The Term shall be automatically extended at the end of the Initial Period for further "Option Period(s)" described below ending on the date that is (*e.g., nine (9) months*) following the date of release of the last record containing the Minimum Recording Commitment for that option period, unless COMPANY gives ARTIST notice before the end of the then-current period of the Term stating that it does not wish to extend the Term. ARTIST hereby grants to COMPANY the irrevocable right to extend the Term for (*e.g., two (2)*) such Option Period(s), each of which shall run consecutively and separately, and each of which shall begin at the expiration of the prior contract period, unless, upon notice to ARTIST, COMPANY chooses to commence any Option Period prior to the expiration of the previous contract period.

(b) Notwithstanding the foregoing, in the event COMPANY enters into a MAJOR LABEL AGREEMENT (as defined in Clause 8 below), the term of this Agreement shall be co-terminous with the term of such MAJOR LABEL AGREEMENT (and all renewals and extensions thereof). [OPTIONAL]

(c) If COMPANY does not enter into a MAJOR LABEL AGREEMENT [on terms acceptable to ARTIST] within (*e.g., twelve (12) months*) after the date of full execution of this Agreement (the "Shopping Period"), then the Term of this Agreement shall [automatically terminate][terminate (*e.g., thirty (30) days*) after ARTIST's notification to COMPANY of ARTIST's desire to terminate pursuant to this clause] [provided such notice is given within a (*e.g., thirty (30) day*) period of the expiration of such Shopping Period]. In the event that COMPANY presents ARTIST during the Shopping Period with a binding, mutually acceptable, written deal memo containing the essential points of a MAJOR LABEL AGREEMENT, COMPANY shall have a reasonable period not to exceed (*e.g., six (6) months*) to conclude such agreement [or to enter into an alternative MAJOR LABEL AGREEMENT which is acceptable to ARTIST.] COMMENT

3. DELIVERY OBLIGATION:

(a) During the Initial Period and each Option Period, if any, of the Term, ARTIST shall record and Deliver Master Recordings to COMPANY, technically and commercially satisfactory, in COMPANY's reasonable judgment, for the manufacture and sale of records. ARTIST shall record at least (*e.g., three (3)*) Master Recordings, or, at COMPANY'S option, (*e.g., one (1)*) full LP-record (or its equivalent) of not less than *e.g., forty-five (45) minutes* in length in the Initial Period, and in each of the Option Periods, if any, plus any additional masters or alternative versions of masters that COMPANY may reasonably require for inclusion on Singles and the like (collectively or individually referred to herein as "Album"). The foregoing recording(s) are sometimes referred to herein as the "Minimum Recording Commitment" with respect to the term period applicable thereto. The Minimum Recording Commitment for each period shall be Delivered (as defined hereinbelow) to COMPANY within (*e.g., three (3) months*) following the commencement of the applicable contract period, unless COMPANY, at its sole and absolute discretion, extends the period for Delivery as required or desired by COMPANY.

(b) Following commencement of each period of the Term, ARTIST and COMPANY shall mutually agree on the following [subject to COMPANY's final decision in case of an impasse]:

(i) the Musical Compositions to be recorded;

(ii) the dates and places of recording, mixing and mastering, it being agreed that COMPANY's recording facility shall be deemed mutually approved;

(iii) artwork, liner notes and Website displays.

(c) ARTIST hereby approves of, and engages, such producer as is selected by COMPANY, which may include (*insert name of pre-selected producer(s)*) and/or any other producer chosen by COMPANY, at COMPANY's sole and absolute discretion for the production of all masters recorded hereunder. ARTIST shall in no event agree to hire another producer without prior written approval of COMPANY, which may be granted or withheld at COMPANY's sole and absolute discretion.

(d) In the event that ARTIST or MAJOR LABEL/DISTRIBUTOR (as defined in Clause 8 below) shall hire a producer not selected by COMPANY for production of any masters pursuant to a MAJOR LABEL AGREEMENT, then COMPANY shall be entitled to an override royalty at the rate of (*e.g., two percent (2%)*) of the suggested retail list price (or foreign equivalent) with respect to the exploitation through normal retail channels of (*e.g., one hundred percent (100%)*) of net sales worldwide of the (*e.g., first and second*) Album released and

distributed by MAJOR LABEL/DISTRIBUTOR or any other licensee or sub-licensee.

(e) The Minimum Recording Commitment for each period of the Term will not be deemed "Delivered" to COMPANY until ARTIST has delivered and COMPANY has accepted:

(i) satisfactory Master Recordings in the form of a two-track stereo tape, fully edited, mixed, leadered, equalized and otherwise in the proper form for the production of parts necessary for the manufacture of records ("Masters" or "Master Recordings");

(ii) all label copy information (*e.g.,* the timing, title and publisher(s) of each composition and any other information that is to appear on labels and/or liners of records containing those Masters);

(iii) all mechanical licenses for each Musical Composition embodied in the Masters;

(iv) any artwork that COMPANY and ARTIST have agreed shall be prepared by ARTIST;

(v) all "sideman" agreements, producer agreements and any other required third party clearances;

(vi) all "sampling" clearance documents; and

(vii) all other documents reasonably required by COMPANY for it to enjoy the full benefit of rights granted hereunder throughout the "Territory" (as defined in Clause 4(b) below) in perpetuity.

4. OWNERSHIP RIGHTS:

(a) COMPANY shall be, and hereby is, the owner from inception of each Master Recording, outtake, multitrack tape and other product of recording sessions featuring ARTIST's performances hereunder conducted during the Term. For purposes of this Clause 4, ARTIST shall be deemed to be COMPANY's "employee-for-hire" and each Master Recording created hereunder shall be deemed to be a "work for hire" created by ARTIST for COMPANY. However, to the extent that ARTIST may be found to be the owner or author of any Master Recording, ARTIST hereby irrevocably assigns to COMPANY all of ARTIST's rights in such Master Recording, including the worldwide sound recording copyright. ARTIST hereby grants to COMPANY an irrevocable power of attorney to execute for ARTIST, in ARTIST's name, all documents necessary to make the assignment.

(b) Without limiting COMPANY's rights above, COMPANY shall have the exclusive right, throughout the universe (Territory) and in perpetuity, to:

(i) manufacture, distribute, promote, advertise, sell, lease, license or otherwise exploit commercially, promotionally or otherwise records containing the Masters in all media now known or hitherto devised;

(ii) use ARTIST's name, approved photograph, likeness and/or biography in connection with promotion, advertising and trade, including the exploitation of records, as news or information and in general goodwill advertising;

(iii) license any or all of COMPANY's rights under this Agreement to third parties, as COMPANY deems advisable in its reasonable judgment after consulting with ARTIST.

ARTIST acknowledges that COMPANY is not required to do any of the undertakings contemplated herein unless COMPANY in its sole discretion decides to do so.

5. RECORDING PROCEDURE:

(a) COMPANY shall pay for all costs of recording the Minimum Recording Commitment at recording facilities designated by COMPANY in each period of the Term up to the amount of a recording budget to be determined at COMPANY's sole and absolute discretion ("Recording Costs"). All Recording Costs shall be deemed advances [fully deductible "off the top"] [*or*] [fully recoupable from ARTIST's share of Net Profits] prior to distribution of royalties (or any other form of compensation) to either ARTIST or COMPANY pursuant to Clause 7 below. Recording Costs may include reasonable travel, rehearsal and equipment rental expenses; advances to producers; studio and engineering charges; tape costs; mastering, remastering and remixing; all union scale payments that may be required to be made to ARTIST or other performers on any Master recorded under this Agreement; all costs of instrumental, vocal or other performers; all amounts required to be paid pursuant to any law or any agreement with applicable unions in connection with any Master Recordings made under this Agreement; and any other costs or expenses customarily considered to be recording costs by the recording industry.

(b) In the event that COMPANY's recording facility is used in connection with any Album hereunder, for purposes of determining recoupment of Recording Costs, COMPANY's recording facility shall be billed out at (*e.g., fifty dollars ($50)*) per hour, inclusive of engineering services provided by COMPANY's in-house engineering staff. Subject to COMPANY's consent, if ARTIST desires to utilize outside engineer(s) and/or producer(s), the amounts which COMPANY will allocate for such services shall be subject to COMPANY's prior approval, and shall be deemed fully recoupable by COMPANY from ARTIST's royalties.

(c) In the event the Recording Costs paid or incurred by COMPANY exceed the recording budget, COMPANY shall have the right to deduct an amount equal to such overages from any and all monies payable to ARTIST hereunder if any, or under any other agreement(s) between ARTIST and COMPANY or its licensee(s) or affiliate(s) [,including but not limited to mechanical royalties.]

6. ADVANCES: COMPANY agrees to pay to ARTIST as an advance recoupabale from all royalties hereunder the sum of (*e.g., ten thousand dollars ($10,000)*) in respect of each Album hereunder. Said advance will be payable on acceptance of the applicable Album by COMPANY.

7. ROYALTIES:

(a) COMPANY will pay ARTIST a royalty equal to (*e.g., fifty percent (50%)*) of the net amount actually received by COMPANY through the sale of the records released by COMPANY embodying solely ARTIST's performances hereunder. For purposes of the foregoing sentence, the term "Net Amount Actually Received" shall mean the actual United States dollar amount received in the United States by COMPANY less all documented Recording, manufacturing, printing, distribution, promotion, advertising, tour support and any other agreed costs (collectively "Costs"), which COMPANY shall be entitled to recoup in their entirety ["off the top' from first dollars received] [*or*] [from ARTIST's share of the Net Amount Actually Received]. ARTIST shall be entitled to receive ARTIST's royalty prospectively from the first unit sold after COMPANY has recouped all such Costs. ARTIST hereby agrees that ARTIST's royalty as described in this Clause is in lieu of all other royalties or other income of any kind with respect to exploitation of the Masters hereunder

in any media now known or hereafter devised for the full economic benefit thereof, and ARTIST hereby explicitly waives all rights to any other record royalties with respect to sales of records hereunder.

(b) COMPANY agrees to consult with ARTIST with respect to promotion, tour support, advertising and other costs to be recouped by COMPANY; however, all final decisions in such matters shall be made by COMPANY. ARTIST acknowledges that COMPANY shall not be required to consult with ARTIST with respect to manufacturing, printing or distribution costs.

(c) COMPANY shall be entitled to maintain a single account with respect to Costs incurred and/or paid with respect to all records recorded under this Agreement.

8. MAJOR LABEL/DISTRIBUTOR:

(a) ARTIST understands and acknowledges that COMPANY may enter into an agreement with a so-called "Major Distributor" and/or "Major Label" ("MAJOR LABEL/DISTRIBUTOR"). For purposes of this Agreement, a "Major Label" is a company which is regularly distributed by a "Major Distributor," which includes BMG, CEMA, SONY, UMG, WEA, or such other distributor as the parties may agree in writing to include within the definition. Such an agreement with a MAJOR LABEL/DISTRIBUTOR (the "MAJOR AGREEMENT") may contain terms pursuant to which MAJOR LABLE/DISTRIBUTOR may elect to release and/or distribute records, including Albums featuring ARTISTS, jointly with COMPANY, or on an alternative basis agreeable to COMPANY. Regardless of any other provisions of such MAJOR LABEL AGREEMENT, MAJOR LABEL/DISTRIBUTOR may license or distribute records featuring ARTIST's performances in its discretion. If MAJOR LABEL/DISTRIBUTOR elects to release and/or distribute any Album featuring ARTIST, then the provisions of Clause 7 above (the royalty section) shall govern the distribution of royalties received by COMPANY from MAJOR LABEL/DISTRIBUTOR in the country in which MAJOR LABEL/DISTRIBUTOR distributes ARTIST's records; however, COMPANY's and ARTIST's royalty shall be computed and paid in accordance with the royalty computation provisions of the MAJOR LABEL AGREEMENT (*i.e.,* the actual royalty payable to ARTIST will be (*e.g., fifty percent (50%)*) of COMPANY's royalty, computed in the same way that COMPANY's royalty is computed by MAJOR LABEL/DISTRIBUTOR, with reductions for free goods, foreign sales, club sales, etc., and subject to recoupment of both MAJOR LABEL/DISTRIBUTOR's and COMPANY's Costs]. COMPANY shall provide ARTIST, upon request, with a copy of any such effective royalty computation provisions in COMPANY's possession.

(b) This Agreement is subject to assignment to MAJOR LABEL/DISTRIBUTOR in accordance with the MAJOR LABEL AGREEMENT and MAJOR LABEL/ DISTRIBUTOR shall have the right to exercise, implement or enforce any rights granted to COMPANY in this Agreement on COMPANY's behalf. In the event of a default by COMPANY in performing any of COMPANY's obligations under this Agreement, ARTIST shall send duplicate notices of the default to MAJOR LABEL/DISTRIBUTOR at such address(es) as MAJOR LABEL/DISTRIBUTOR may specify, simultaneously with the giving of the notice to COMPANY and MAJOR LABEL/DISTRIBUTOR shall have the right to cure each default on COMPANY's behalf.

(c) All Master Recordings made under this Agreement may be distributed through COMPANY by MAJOR LABEL/DISTRIBUTOR or its affiliated entities, at COMPANY's discretion.

9. ACCOUNTING:

(a) COMPANY will compute ARTIST's royalties as of each *June 30th* and *December 31st* for

the prior *six (6) months* for each *six-month* period in which there are sales or returns of records or any other transactions on which royalties are payable to ARTIST. On the next *September 30th* or *March 31st* COMPANY will send ARTIST a statement covering those royalties and will pay ARTIST any royalties which are due after deducting unrecouped Advances or other sums which are recoupable hereunder. COMPANY will maintain royalty reserves against anticipated returns or credits pursuant to Subclause 9(e) below.

(b) COMPANY will pay ARTIST royalties only on those sales of records or licenses for which COMPANY actually receives payment. If COMPANY is unable to receive any payments in the United States in U.S. dollars, COMPANY will, at ARTIST's written request, deposit ARTIST's share thereof in a foreign depository of ARTIST's choosing at ARTIST's expense, and such deposit shall be deemed in full satisfaction of COMPANY's obligation to ARTIST with respect to such royalties.

(c) COMPANY will keep books and records which report sales of records and any other transactions on which royalties are payable to ARTIST. ARTIST may engage a certified public accountant to inspect those books and records during normal business hours at the place where such records are normally kept to check the accuracy of COMPANY's statements, but ARTIST may do so only once for any particular statement and only within (*e.g., one (1) year*) after the date when COMPANY is required to send ARTIST that statement. ARTIST must give COMPANY at least (*e.g., fifteen (15) days*) notice of ARTIST's wish to inspect the books and records. ARTIST may object to any statement by giving COMPANY specific written notice within (*e.g., two (2) years*) after the date when COMPANY is required to send ARTIST that statement, but if ARTIST does not do so within that year the statement will be final and ARTIST will no longer have any right to object. ARTIST will not have any right to sue COMPANY in connection with any statement or royalty accounting unless ARTIST commences suit within that (*e.g., two (2) year*) period. COMPANY, and not ARTIST, shall have the right to audit MAJOR LABEL/DISTRIBUTOR, and COMPANY may choose whether to do so at its sole discretion.

(d) ARTIST acknowledges that if MAJOR LABEL/DISTRIBUTOR elects to release and/or distribute records jointly with COMPANY, COMPANY may direct MAJOR LABEL/DISTRIBUTOR to pay ARTIST royalties directly, in which case the accounting provisions of the MAJOR LABEL AGREEMENT will supersede the accounting provisions of this Agreement. COMPANY will provide ARTIST, upon written request, with a copy of those provisions at any time after MAJOR LABEL/DISTRIBUTOR's election to release and/or distribute. If, however, MAJOR LABEL/DISTRIBUTOR makes the election but continues to pay all royalties to COMPANY, the time by which COMPANY must account to ARTIST above will be extended until the date (*e.g., thirty (30) days*) following receipt of MAJOR LABEL/DISTRIBUTOR's statement to COMPANY.

(e) COMPANY shall have the right to retain, as a reserve against charges, credits, or returns, a reasonable portion of payable royalties. Any particular reserve established by COMPANY hereunder shall not exceed an amount equal to (*e.g., twenty to thirty percent (20%-30%)*) of the royalties earned hereunder for such particular semi-annual period and shall be liquidated with respect to records sold by us hereunder as of the end of (*e.g., two (2)*) semi-annual accounting periods after the period in which such reserve was initially established. Notwithstanding the foregoing, in the event that COMPANY enters into a MAJOR LABEL AGREEMENT, ARTIST agrees to increase the time for liquidation of reserves to conform to the applicable provision of the MAJOR AGREEMENT; provided, however, COMPANY agrees to use best efforts to cause such MAJOR AGREEMENT to provide for liquidation of reserves no later than as of the end of the accounting period ending (*e.g., eighteen (18) months*) after the period in which such reserve was initially established.

[OPTIONAL]10. CO-PUBLISHING:

(a) As additional consideration to induce COMPANY to enter into this Agreement, ARTIST and his publishing designee (hereinafter collectively referred to as "the Publishing Designee") hereby irrevocably assign, convey and set over to COMPANY an undivided (*e.g., fifty percent (50%)*) interest in the worldwide copyright (and all renewals and extensions thereof) and all other rights in and to each composition written, in whole or in part or owed and/or controlled, directly or indirectly by ARTIST ("Artist Composition"). For purposes of this Clause, "COMPANY" shall be deemed to refer to COMPANY and/or its publishing designee.

(b) (i) COMPANY shall be the exclusive administrator of all rights in and to each such Artist Composition throughout the World for the term of copyright (and all renewals and extensions thereof), and COMPANY shall be entitled to exercise any and all rights with respect to the control and administration of the Artist Composition(s), including without limitation, the sole right to grant licenses, collect all income and to use the name, likeness and biographical material of each composer, lyricist and songwriter hereunder in connection with each applicable Artist Composition for the full term of copyright (including all renewals and extensions thereof) in and to each Artist Composition; and

(ii) Without limiting the generality of the foregoing, BMI or ASCAP ("the Society") shall be authorized and directed to pay the publisher's share of performance fees collected by the Society with respect to public performances of Artist Compositions in the United States and Canada directly to COMPANY.

(c) ARTIST represents and warrants that each Artist Composition is original and does not infringe upon or violate the rights of any other person and that ARTIST has the full and unencumbered right, power and authority to grant to COMPANY all of the rights herein granted to COMPANY. COMPANY shall have the benefit of all warranties and representations given by the writers of the Artist Compositions.

(d) From all royalties earned and received by COMPANY in the United States from the exploitation of the Artist Compositions(s) throughout the World (the "Gross Receipts"), COMPANY shall:

(i) Deduct and retain all out-of-pocket costs incurred by COMPANY in connection with the exploitation, administration and protection of the Artist Compositions;

(ii) Deduct and pay royalties payable to the writers of the Artist Compositions (which ARTIST warrants and represents shall not exceed (*e.g., fifty percent (50%)*) of the Gross Receipts); and

(iii) pay to ARTIST an amount equal to (*e.g., fifty percent (50%)*) of the balance remaining after deducting the aggregate sums set forth in Subclauses (i) and (ii) above, and the remaining (*e.g., fifty percent (50%)*) thereof shall be retained by COMPANY for COMPANY's sole use and benefit.

(e) Accountings for such royalties shall be rendered separately from all other royalties payable hereunder at the same time that accountings with respect to record royalties are rendered pursuant to Clause 9 above.

(f) Any assignment made of the ownership or copyright in, or right to license the use of, any

Artist Compositions referred to in this Clause shall be made subject to the provisions hereof. The provisions of Clause 10 are accepted by ARTIST on ARTIST's own behalf and on behalf of any other owner of any Artist Compositions or any rights therein (provided that nothing herein shall require ARTIST to cause an unaffiliated third party co-writer to convey to COMPANY any portion of an Artist Composition composed by such unaffiliated third party co-writer).

(g) ARTIST shall execute and deliver to COMPANY any documents (including without limitation, assignments of copyright, letters of direction to the applicable Society and COMPANY's standard Exclusive Songwriter and Composer Agreement/Co-Publishing Agreement (subject to negotiation of the non-substantive provisions thereof) which COMPANY may require to vest in COMPANY and/or COMPANY's designee(s), the copyright and other rights herein granted to COMPANY in respect of each Artist Composition. If ARTIST shall fail to promptly execute such document, ARTIST hereby irrevocably grants to COMPANY a power of attorney to execute such document in ARTIST's name.

[OPTIONAL] 11. MERCHANDISING RIGHTS: ARTIST hereby grants to COMPANY all merchandising rights and the sole and exclusive right to use ARTIST's name (both legal and professional), approved likeness, approved picture and approved portrait in any manner whatsoever, and in perpetuity, in connection with the exercise of the merchandising rights herein granted. COMPANY shall have the right to grant to others (including companies affiliated with COMPANY), upon such terms as COMPANY shall see fit, the right to exercise or cause to be exercised such merchandising rights. COMPANY shall pay to ARTIST, pursuant to a separate accounting in accordance with the provisions of Clause 9 above, and in addition to any and all monies provided for in this Agreement, (*e.g., fifty percent (50%)*) of all "Net Monies" received by COMPANY in connection with the exercise of said merchandising rights. The term "Net Monies" as used in this Clause shall mean all monies received less deductions for reasonable out-of-pocket costs incurred by COMPANY in connection with the exploitation, administration and protection of merchandising rights hereunder.

12. MECHANICAL ROYALTIES:

(a) ARTIST hereby grants to COMPANY, its distributors, and its licensees, an irrevocable license under copyright to reproduce each Controlled Composition on records and to distribute them throughout the Territory. The term "Controlled Composition" as used in this Agreement means any Musical Composition that, in whole or in part, is written, owned or controlled by ARTIST, any producer of Masters recorded by ARTIST or any person or other entity in which ARTIST or the producer has an interest.

(b) Any assignment made of the ownership of copyrights in, or the rights to license or administer the use of any Controlled Compositions, shall be subject to the terms and provisions hereof.

(c) If MAJOR LABEL/DISTRIBUTOR distributes records containing ARTIST's performances, COMPANY shall decide, at its sole discretion whether the mechanical royalty provisions of Clause 12 shall apply to the MAJOR LABEL AGREEMENT, or whether the mechanical royalty provisions of the MAJOR LABEL AGREEMENT shall apply to ARTIST under this Agreement. ARTIST hereby consents to either formulation contained in the previous sentence. COMPANY will provide ARTIST, upon request, with a copy of those relevant mechanical royalty provisions contained in the MAJOR LABEL AGREEMENT at any time after MAJOR LABEL/DISTRIBUTOR elects to release and/or distribute records jointly with COMPANY.

(d) If any Album made under this Agreement contains compositions that are not Controlled Compositions, ARTIST will obtain licenses covering those compositions on terms no less favorable than those contained in the standard mechanical license issued by the Harry Fox Agency, Inc. ARTIST will also cause to be issued to COMPANY licenses to reproduce each non-Controlled Composition on records distributed in the rest of the universe on terms as favorable as those generally prevailing in the country concerned. Subject to Clause 12, ARTIST also grants to COMPANY an irrevocable license to reproduce any video featuring ARTIST's performances, to distribute and sell copies of those videos, to publicly perform and to otherwise exploit them, without additional payment by COMPANY. ARTIST hereby agrees to grant COMPANY a mechanical license to reproduce each Controlled Composition for a royalty equal to (*e.g., seventy-five percent (75%)*) of the minimum applicable statutory rate (without regard to the so-called "long song formula") in effect in the United States or other applicable country on the date of the first commercial release of the record. With respect to non-Controlled Compositions ARTIST shall use its best efforts to assist COMPANY in obtaining similar terms from the copyright owner. Notwithstanding anything contained herein, the maximum combined rate for all Musical Compositions on each EP shall not exceed (*e.g., five (5) times*) (*e.g., seventy-five percent (75%)*) of such minimum applicable statutory rate and the maximum combined rate for all Musical Compositions on each Album shall not exceed (*e.g., ten (10)*) times (*e.g., seventy-five percent (75%)*) of such minimum applicable statutory rate ("Mechanical Royalty Cap"). To the extent that COMPANY is required to pay mechanical royalties in excess of such Mechanical Royalty Cap, COMPANY may deduct such excess from any and all monies otherwise payable to ARTIST hereunder.

13. WARRANTIES AND REPRESENTATIONS: ARTIST, jointly and severally, warrants and represents that: ARTIST has the right to enter into and perform this Agreement and is eighteen (18) years of age or older; COMPANY will not be required to make any payments in connection with the rights granted to it or exploited by it pursuant to this Agreement except as specifically set forth herein; except as set forth elsewhere in this Agreement, ARTIST will not record or perform any services for the purpose of making, promoting or marketing records for any entity or person except COMPANY; and no materials, including Master Recordings, Controlled Compositions, names used by ARTIST or other musical and Artistic elements furnished by ARTIST and used in connection with records made and distributed by COMPANY, will violate any law or infringe any person or entity's rights, including but not limited to copyright, trademark, privacy and defamation laws.

14. INDEMNIFICATION: ARTIST, jointly and severally, will at all times indemnify COMPANY against any claims, damages, costs and expenses (including reasonable attorneys' fees) arising out of any breach or alleged breach by ARTIST of any warranty, representation or agreement in this Agreement. COMPANY will not withhold monies otherwise payable to ARTIST in an amount exceeding ARTIST's potential liability to COMPANY under Clause 14, as determined in COMPANY's reasonable business judgment. ARTIST shall promptly inform COMPANY of any such claims.

15. VIDEO COMMITMENT & RELEASE: COMPANY and ARTIST agree that if both of them wish to produce a video featuring ARTIST's performance(s), they shall mutually establish a budget ("Approved Video Budget") for the production and they shall agree on the director, producer and other creative elements. COMPANY shall pay for all costs of producing the video up to the amount of the Approved Video Budget ("Video Production Costs"). If Video Production Costs exceed the amount of the Approved Video Budget, COMPANY may recoup such costs from (*e.g., one hundred percent (100%)*) of ARTIST's royalties or ARTIST shall be responsible for paying for such excess amounts from outside funding sources, at COMPANY's discretion, as agreed prior to commencement of the video. All Video Production Costs incurred by COMPANY within the Approved Video Budget shall be recoupable from

(*e.g., fifty percent (50%)*) of all record royalties payable to ARTIST under this Agreement and (*e.g., one hundred percent (100%)*) of all video royalties payable to artist under this Agreement. COMPANY shall own the copyright in and control all rights to the video. ARTIST will not during the Term perform in any other audio-visual video or film featuring ARTIST's performances without obtaining COMPANY's prior written consent.

[OPTIONAL] 16. MINIMUM RECORDING OBLIGATION:

(a) If COMPANY does not allow ARTIST to commence recording the Minimum Recording Commitment within (*e.g., six (6) months*) following the commencement of any period of the Term, or if COMPANY fails to release (*e.g., fifteen thousand (15,000)*) records in the CD format containing the Minimum Recording Commitment for any period of the Term within (*e.g., six (6) months*) of delivery of that Minimum Recording Commitment, ARTIST may give COMPANY notice that ARTIST wishes to terminate this Agreement at any time within (*e.g., thirty (30) days*) following whichever date applies. If COMPANY does not allow ARTIST to commence recording, or does not release records containing the Minimum Recording Commitment, as applicable, within the next (*e.g., sixty (60) days*), this Agreement will automatically terminate.

(b) [Notwithstanding the foregoing, in the event that a MAJOR LABEL AGREEMENT provides terms inconsistent or contrary to those contained in the previous Clause 16(a), the terms of the MAJOR LABEL AGREEMENT shall govern.]

17. EXPIRATION OR TERMINATION:

(a) Upon the expiration or termination of this Agreement neither COMPANY nor ARTIST shall have any further obligations to the other, except that COMPANY shall continue to account to ARTIST for royalties due, if any, and all of ARTIST's warranties and representations shall survive and ARTIST's indemnity of COMPANY shall continue.

(b) ARTIST shall not re-record any composition recorded for COMPANY under this Agreement for a period of (*e.g., three (3) years*) following the release of the last recording embodying that composition by COMPANY, or (*e.g., two (2) years*) following the expiration of this Agreement, whichever is later.

18. INJUNCTIVE RELIEF:

(a) ARTIST acknowledges that ARTIST's services are unique and that COMPANY would not be adequately compensated by money damages for the loss of those services, and COMPANY will be entitled to seek injunctive relief to enforce this Agreement

[OPTIONAL] (b) COMPANY shall instruct any MAJOR LABEL/DISTRIBUTOR with which it enters into a MAJOR LABEL AGREEMENT to provide guaranteed compensation ("Guaranteed Compensation") equal to amount(s) required under California Civil Code § 3423. Nothing contained herein shall obligate COMPANY to pay directly to ARTIST and/or any "Applicable Member" (as that term is understood in the music industry) any such Guaranteed Compensation, but COMPANY may, at its sole discretion, choose to make such payments. This Clause shall be deemed to fully satisfy the requirements of California Civil Code § 3423 and shall enable Company to seek injunctive relief with respect to one (1) or more members of ARTIST; provided that COMPANY and/or MAJOR LABEL/DISTRIBUTOR pays such Guaranteed Compensation.

[OPTIONAL] 19. LEAVING MEMBER OF GROUP [IF ARTIST IS COMPRISED OF MORE THAN

ONE (1) INDIVIDUAL]:

(a) ARTIST will notify COMPANY if any member of ARTIST leaves the group. COMPANY will then have (*e.g., sixty (60)*) days to notify ARTIST that COMPANY wishes to enter into a separate agreement with the "Leaving Member." The Leaving Member agrees that if COMPANY elects to enter into an agreement with him or her, then that agreement shall contain exactly the same terms and conditions as this Agreement except that: (i) the Initial Period shall start on the date that COMPANY elects to enter into the agreement with the "Leaving Member" and that the Term shall be extendable by COMPANY until the end of this Agreement (at COMPANY's option); and (ii) the advances and the royalties payable to the Leaving Member shall be equal to two-thirds (2/3) of those payable to ARTIST under this Agreement. COMPANY shall be entitled to maintain a single account with respect to recordings subject to this Agreement and any agreements with Leaving Members.

(b) If any member of ARTIST leaves the group, COMPANY shall have approval of any "New Member" who may be hired to replace such Leaving Member. No New Member will be added unless the new member becomes a party to this Agreement by executing all documents COMPANY deems necessary. Alternatively, if any member of ARTIST leaves the group, COMPANY may terminate this Agreement with no further obligations to ARTIST other than to continue to account to ARTIST for sales of ARTIST's records; ARTIST's warranties and representations will survive any termination, as will COMPANY's Leaving Member option above. Upon such termination, COMPANY may elect to treat all members as Leaving Members.

20. NOTICES: All notices to COMPANY or to ARTIST shall be sent to their respective addresses on page 1 and may be given only by personal delivery or overnight courier with a signed receipt or certified or registered mail, return receipt requested. Notices will be considered to have been given when they are personally delivered, deposited with the courier or mailed, according to the method used. Copies of all notices to COMPANY shall be sent to (*name and address of counsel for the Company*). Copies of all notices to ARTIST shall be sent to (*name and address of counsel for the Artist*)

21. MISCELLANEOUS:

(a) If ARTIST believes that COMPANY is in breach of any of its obligations, ARTIST shall send COMPANY a specific notice and COMPANY shall have a reasonable period of not less than (*e.g., thirty (30) days*) in which to cure the breach, if any. ARTIST shall not have the right to terminate this Agreement or recover any damages from COMPANY unless COMPANY fails to so cure a material breach of which it was given notice.

(b) This is the entire agreement between COMPANY and ARTIST and it supersedes all prior agreements or understandings, written or oral. Any amendment or modification must be in writing and must be signed by both COMPANY and ARTIST. Any waiver of rights by COMPANY in any one instance shall not be a waiver of its rights in the future and any immediate failure to enforce its rights shall not be deemed a waiver by COMPANY. Clause headings are used only for convenience and have no meaning or effect.

(c) This Agreement shall be governed by the laws of the State of (*state*) applicable to contracts entered into and performed in (*state*) COMPANY and ARTIST agree that any action related to this Agreement may only be brought in the state or federal courts located in (*jurisdiction*).

(d) ARTIST agrees to sign any additional documents, including tax forms required for

payments to be made to ARTIST, which COMPANY may reasonably require. This Agreement does not constitute a joint venture or partnership, but the parties hereto are independent contractors.

(e) Whenever ARTIST's approval is required pursuant to any provision of this Agreement, such approval shall be deemed given to COMPANY if, after *ten (10) days* written notice to ARTIST by COMPANY that such approval or consent is required, ARTIST fails to respond in writing.

(f) ARTIST has been advised to obtain independent legal counsel prior to executing this Agreement and has either done so or has knowingly opted to forego obtaining such independent legal advice.

If you agree with the terms and conditions above please indicate your acceptance by signing below.

Sincerely,
(*LABEL/ PRODUCTION CO.*)
BY: _____
ITS: _____

ACKNOWLEDGED, AGREED AND ACCEPTED:

(*NAMES*)
SS#:

SS#:

(*NAMES*)
SS#:

SS#:


entertainmentOne

Large Label 360 Agreement (Short Form Incorporating Detailed Exhibits)

EXCLUSIVE RECORDING AGREEMENT (SHORT FORM)

As of _____[*date*]

Dear _____ :

Reference is made to: (a) the standard form Exclusive Long-term Recording Agreement of _____ ("Company") attached hereto as Exhibit A (the "Basic Agreement"); (b) the standard form brand equity agreement of Company attached hereto as Exhibit B (the "Basic Brand Equity Agreement"); and (c) the co-publishing agreement attached hereto as Exhibit C (the "Co-Publishing Agreement"). The Basic Agreement, the Basic Brand Equity Agreement and the Co-Publishing Agreement, as modified and as supplemented by the provisions described below, shall constitute the agreement between you and Company regarding your services as an exclusive recording artist (subject to the immediately subsequent sentence). If Company exercises the Development Period Option (as defined below), you and Company agree to expeditiously prepare and execute a more formal agreement (the "Supplemental Agreement") containing the provisions set forth in this Agreement, as well as such other provisions as are customary in agreements of such type, and to negotiate in good faith with respect to the provisions of the Basic Agreement, the Basic Brand Equity Agreement and the Co-Publishing Agreement (other than those provisions set forth below which are non-negotiable and agreed) to be included therein. In the event of any conflict between the Basic Agreement and/or the Basic Brand Equity Agreement and/or the Co-Publishing Agreement and the provisions set forth below, the provisions set forth below shall control.

The Supplemental Agreement will include all of the provisions of the Basic Agreement, the Basic Brand Equity Agreement and the Co-Publishing Agreement which have been incorporated herein by reference or which are specifically referred to herein, and shall otherwise be in the form of the Basic Agreement, the Basic Brand Equity Agreement and the Co-Publishing Agreement, except in such respects as provided for below or as you and Company shall otherwise agree. You and Company hereby further agree that any unintentional delay or failure on the part of either party to complete the Supplemental Agreement for any reason shall not in any manner impede or compromise the enforceability and effectiveness of this Agreement. Unless specifically provided to the contrary below, all terms defined in the Basic Agreement and/or the Basic Brand Equity Agreement and/or the Co-Publishing Agreement will have the same meanings when used below.

1. TERRITORY: The Universe.

2. TERM:

(a) The term of this Agreement (the "Initial Term") shall begin on the date set forth above and shall terminate sixty days following the expiration of the Development Period (as defined below). The "Development Period" shall begin on the date set forth above and shall continue until the later of (i) ninety days thereafter, and (ii) the date of the delivery of the Development Sides (as defined in subparagraph 3(a) below). At any time prior to the expiration of the Initial Term, Company shall have the option (the "Development Period Option") to give notice to you of Company's intention to complete the Supplemental

Agreement, the Basic Agreement, the Basic Brand Equity Agreement and the Co-Publishing Agreement. If Company exercises the Development Period Option, the first Contract Period under the Basic Agreement shall be deemed to have begun on the date set forth above and shall continue in accordance with paragraph 1.01 of the Basic Agreement and the first Participation Term of the Basic Brand Equity Agreement shall be deemed to have begun on the date set forth above and shall continue in accordance with paragraph 1.01 of the Basic Brand Equity Agreement. If Company does not exercise the Development Period Option, the term of this Agreement shall expire at the end of the Initial Term and you shall not have any further obligation or liability to Company.

(b) If Company exercises the Development Period Option, you hereby grant Company six separate options to extend the Term for additional Contract Periods as set forth in the Basic Agreement.

3. RECORDING COMMITMENT:

(a) During the Development Period, you shall perform for the production of finished Recordings (mixed or unmixed) sufficient to constitute four Sides (as determined by Company in its reasonable discretion) (the "Development Sides"). You or the producer will deliver the Development Sides to Company prior to the expiration of the Development Period. The Development Sides shall, under any circumstance, be treated as Masters made under this Agreement for all purposes. Company will pay all of the recording costs (the "Recording Costs") incurred in connection with the recording of the Development Sides, including all travel and lodging expenses for you in _____[*name of recording city*] for up to thirty days, in accordance with a mutually agreed-upon budget not to exceed $_____ .

(b) During the first Contract Period (if Company exercises the Development Period Option), and each Contract Period thereafter (if Company exercises each Contract Period Option), you shall perform for the recording of Recordings sufficient to constitute one Album, cause those Recordings to be produced, and Deliver those Recordings to Company in accordance with Article 3 of the Basic Agreement.

(c) You and Company hereby mutually approve _____ as producer of all Recordings hereunder.

4. ADVANCES/FUNDS/PAYMENTS: Company shall pay you an Advance in the amount of $_____ as follows:

(a) $_____ , payable promptly following the complete execution of this Agreement by you and Company; and $_____ , payable promptly following your or the producer's Delivery of the Development Sides to Company. In addition, Company shall pay all Recording Costs incurred in connection with the Development Sides, provided, however, that Company shall not be required to pay more than $_____ of such Recording Costs. For the avoidance of doubt, such Recording Costs shall constitute Advances hereunder.

(b) Promptly after your or the producer's Delivery to Company of the Recordings constituting the first Album in satisfaction of the Recording Commitment, Company shall pay you an Advance in the amount of $_____ . The Advances for the following Albums shall be based on a 2/3rds formula of royalties earned by you on sales of the immediately preceding album, with the following minimums and maximums:

	Min	Max

Album 2:	$_____	$_____
Album 3:	$_____	$_____
Album 4:	$_____	$_____
Album 5:	$_____	$_____
Album 6:	$_____	$_____
Album 7:	$_____	$_____

(c) Each Album of your Recording Commitment shall be recorded pursuant to a budget approved by Company in accordance with subparagraph 4.01(a) of the Basic Agreement, without giving effect to the last sentence of such subparagraph 4.01(a).

5. ROYALTIES:

(a) The Basic U.S. Rate (which, for the avoidance of doubt, shall be calculated on a so-called "PPD" basis (*i.e.*, without so-called "automatic free goods," "container charges," or similar deductions) as provided in subparagraph 9.01(a) of the Basic Agreement shall be as follows:

TYPE OF RECORD	BASIC U.S. RATES	
(i)	Albums/Digital Sides in the first and second Contract Periods	_____ %
(ii)	Albums/Digital Sides in the third and fourth Contract Periods	_____ %
(iii)	Albums/Digital Sides in the fifth, sixth and seventh Contract Periods	_____ %
(iv)	Singles and EPs	_____ %

Notwithstanding subparagraph 9.01(b) of the Basic Agreement, the royalty rate (the "Escalated U.S. Rate") in respect of USNRC Net Sales of each Album recorded pursuant to your Recording Commitment in excess of the following number of units, shall be escalated by the applicable rate set forth below:

(A) _____ % escalation on unit sales exceeding 500,000; and

(B) an additional _____ % escalation on unit sales exceeding 1,000,000

6. PARTICIPATION PAYMENTS:

(a) Promptly following the exercise by Company of the Development Period Option and the full execution of the Brand Equity Agreement along with all other Supplemental Agreements, Company shall pay you a fee in the amount of $_____ in connection with the Basic Brand Equity Agreement. All references to the "Fees" in the Basic Brand Equity Agreement shall be understood to mean the fee prescribed in this subparagraph 6(a).

(b) The percentage of Covered Revenues payable pursuant to subparagraph 3.01(a) of the Basic Brand Equity Agreement shall be 50 percent. Notwithstanding anything to the contrary contained herein or in the Basic Brand Equity Agreement, the percentage of Covered

Revenues payable in connection with music publishing and songwriting shall be 25 percent.

7. RIGHTS IN RECORDINGS:

Company shall own all rights in the recordings and the Development Sides in perpetuity as set forth in Article 7 of the Basic Agreement. Company agrees to negotiate in good faith with you with respect to the commercial exploitation of the Development Sides by you or your designee if Company does not exercise the Development Period Option.

8. CO-PUBLISHING AGREEMENT:

Company's music publishing designee ("Publisher") shall pay to you, under the Co-Publishing Agreement, 50 percent of the so-called "publisher's share" of public performance income; 75 percent of mechanical royalties; 70 percent of revenues from "cover" recordings secured by Publisher; 75 percent of synchronization fees and 75 percent of all other income derived from exploitations of the Published Compositions (as defined in the Co-Publishing Agreement), including, without deduction of any administration fee from any income derived from any exploitation of the Published Compositions. All income derived from foreign sources shall be calculated on a so-called "at source" basis (as such term is generally understood in the music publishing industry) as received from performing and mechanical rights societies and other licensees, and not reduced by deductions by Publisher's affiliates, subpublishers or licensees.

9. Company and you agree and acknowledge that paragraph 18.05 of the Basic Agreement is deemed agreed to and not subject to any further negotiation.

Very truly yours,
"Company"
By: _____
Title _____

ACCEPTED AND AGREED TO:
_____
_____
Social Security Number

EXHIBIT A

EXCLUSIVE LONG-TERM RECORDING AGREEMENT

Attached to and made part of a Exclusive Recording Agreement (Short Form) between Company and
_____ , dated as of _____[*date*].

Exclusive Recording Artist Agreement made as of _____[*date*], between _____ ("Company") and _____ ("You").

1. TERM:

1.01. The term of this Agreement (hereinafter, the "Term") shall begin on the date set forth above and shall continue for a first Contract Period ending on the date seven months following the Initial Release in the United States of the Album Delivered in complete satisfaction of the Recording Commitment for such first Contract Period, but in no event later than the date twelve months following Company's receipt of Notice of Delivery of all Recordings constituting the Recording Commitment for such first Contract Period.

1.02.(a) You grant Company six separate options (each a "Contract Period Option") to extend the Term for additional Contract Periods (sometimes, hereinafter, referred to as "Option Periods") on the same terms and conditions applicable to the first Contract Period except as otherwise expressly provided in this Agreement. Company may exercise each of those Contract Period Options by sending you a notice not later than the expiration date of the Contract Period which is then in effect (the "current Contract Period"). If Company exercises a Contract Period Option, the Option Period concerned shall begin immediately after the end of the current Contract Period and shall continue until the date seven months following the Initial Release in the United States of the Album Delivered in complete satisfaction of the Recording Commitment for that Option Period but in no event later than the date twelve months following Company's receipt of Notice of Delivery of all Recordings constituting the Recording Commitment for that Option Period.

(b) Notwithstanding anything to the contrary contained in this paragraph 1.02, if Company has not exercised its option to extend the Term for a further Contract Period as of the date on which the current Contract Period would otherwise expire, the following shall apply:

(i) You shall send Company notice (an "Option Warning") that its option has not yet been exercised.

(ii) Company shall have the right to exercise the applicable Contract Period Option by sending a notice to you not later than the date ten business days after its receipt of the Option Warning (the "Extension Period").

(iii) The current Contract Period shall end on either the last day of the Extension Period or the date of Company's notice to you (the "Termination Notice") that Company does not wish to exercise such option, whichever is sooner.

(iv) For the avoidance of doubt, nothing herein shall limit Company's right to send a Termination Notice to you at any time, nor limit Company's right to exercise a Contract Period Option in accordance with subparagraph 1.02(a) above, notwithstanding any failure by you to send Company an Option Warning in accordance with section 1.02(b)(i) above.

2. SERVICES:

2.01. During the Term you shall render your services as a performing artist for the purpose of making Recordings for Company, you shall cause those Recordings to be produced, and you shall Deliver those Recordings to Company, as provided in this Agreement. (You are sometimes called "you" below; all references in this Agreement to "you and you," and the like, shall be understood to refer to you alone.)

2.02.(a) Your obligations hereunder shall include furnishing the services of the producers of those Recordings, and you shall be solely responsible for engaging and paying them. (Producers whom you engage are sometimes referred to in this Agreement by the term

"Producers.")

(b) (This subparagraph 2.02(b) shall not apply unless you have consented to the engagement of the producer concerned, or the assignment of the staff or contract producer concerned, to the recording project.) If Company, instead, engages producers other than _____ , for any of those Recordings, or if the producers, other than _____ , of any such Recordings are employees of Company or, render their services under contract to Company, the following terms shall apply:

(i) Your royalty account and the production budget for the recording project concerned shall be charged with a Recording Cost item of $_____ per Album (or $_____ per Recording for a project for the recording of less than an Album). If Company is obligated to pay those producers a higher fixed amount attributable to that project, the charge under this section 2.02(b)(1) shall be that amount instead.

(ii) Your royalty under Article 9 on Records made from those Recordings shall be reduced by the amount of a royalty of _____ percent on Albums under paragraph 9.01, adjusted in proportion to the other royalty rates and royalty adjustments provided for in the other provisions of Articles 9 and 10. (If a higher royalty is payable to the producers, the reduction under this section 2.02(b)(ii) shall be the amount of that royalty instead.) You hereby direct Company to deduct, from any and all monies payable or becoming payable to you, the royalties that Company is obligated to pay such producers in respect of Records derived from Recordings produced by such producers.

3. RECORDING COMMITMENT:

3.01.(a) During each Contract Period you shall perform for the recording of Recordings sufficient to constitute the applicable number of Albums listed below, cause those Recordings to be produced, and Deliver those Recordings to Company (the "Recording Commitment").

Contract Period	Recording Commitment
1st	One Album
2nd	One Album
3rd	One Album
4th	One Album
5th	One Album
6th	One Album
7th	One Album

(b) In addition to the Albums and materials constituting the Recording Commitment that are set forth in subparagraph 3.01(a), you hereby grant Company one option (the "Greatest Hits Option") to increase the Recording Commitment by that number of Recordings sufficient to constitute three new Sides (the "New Greatest Hits Sides"), which, as provided in paragraph 6.03 below, Company may embody in, and release as, one "Greatest Hits" or "Best of" Album, consisting of: (i) Masters made under this Agreement and previously released in different Record combinations; and (ii) the New Greatest Hits Sides (the "Qualifying Greatest Hits Album"). Upon Company's exercise of the foregoing option, your Recording Commitment for the then-current Contract Period shall be deemed to include your Delivery of the New Greatest Hits Sides. The New Greatest Hits Sides shall be recorded in accordance with paragraph 4.01(a) below.

3.02. You shall fulfill the Recording Commitment for each Contract Period within the first 5 months after the commencement of such Contract Period.

3.03. Each Album (or other group of Recordings) Delivered to Company in fulfillment of your Recording Commitment shall consist entirely of Recordings made in the course of the same Album (or other) recording project, unless Company consents otherwise. Company may withhold that consent in Company's unrestricted discretion.

4. RECORDING PROCEDURE:

4.01.(a) Prior to the commencement of recording in each instance you and Company shall mutually agree on each of the following, in order, before you proceed further: (i) selection of Producer; (ii) selection of material, including, without limitation, the number of Compositions to be recorded. (Company shall not be deemed unreasonable in rejecting any request to record an Album which would constitute a Multiple Record Set); and (iii) selection of dates of recording and studios where recording is to take place, including the cost of recording at such studios. (Company shall only disapprove the use of a particular studio if it is not a first-class recording studio, if its use would be inconsistent with any of Company's union agreements, if Company anticipates that its use would cause labor difficulties for other reasons, or if Company anticipates that its use would require expenditures inconsistent with the approved recording budget.) The scheduling and booking of all studio time shall be done by Company in accordance with your reasonable requests. In addition, at least 14 days prior to the date of the first recording session for the recording of any Recordings, you shall submit to Company in writing, for Company's written approval, a proposed budget setting forth, in itemized detail, all anticipated Recording Costs. A budget not exceeding the applicable Recording Fund fixed in paragraph 6.01 below, less any payments to you or on your behalf which are intended to reduce such Recording Fund, shall not be disapproved by Company by reason of the budget's overall amount, but each of the items constituting the budget shall be subject to Company's prior written approval.

(b) You shall notify the appropriate Local of the American Federation of Musicians in advance of each recording session.

(c) As and when reasonably required by Company, you shall allow Company's representatives to attend any and all recording sessions hereunder at Company's expense. (Those expenses shall not be recoupable.)

(d) You shall timely supply Company with all of the information Company needs in order: (i) to make payments due or required in connection with Recordings hereunder; (ii) to comply with any and all other obligations Company may have in connection with the making of Recordings hereunder; and (ii) to release Records derived from such Recordings. You shall be solely responsible for and shall pay any penalties incurred for late payment caused by your delay in submitting union contract forms, report forms or invoices, or other documents.

(e) Your submission of Recordings to Company shall constitute your representation that you have obtained all necessary licenses, approvals, consents and permissions.

4.02.(a) No Composition previously recorded by you shall be recorded under this Agreement. No "live" Recording, Joint Recording, or Recording not made in full compliance with this Agreement shall apply in fulfillment of your Recording Commitment, and Company shall not be required to make any payments in connection with any such Recording except

any royalties which may become due under this Agreement if the Recording is released or otherwise exploited by Company.

(b) No Recordings shall be made by or include unauthorized Sampling. ("Sampling," as used herein, refers to the use and reproduction of pre-existing material, hereinafter "Sampled Material," which is owned or controlled by any Person other than you or would not otherwise be subject to Company's rights under Article 7 below, in a Recording hereunder.) Concurrently with your delivery to Company of a Recording, you shall notify Company in writing of the names and addresses of all recording artists, record companies, songwriters and publishers and/or any other Persons who have any right, title or interest of any kind in any Sampled Material embodied in that Recording. You shall be solely responsible for obtaining all consents and licenses necessary or desirable in connection with the use and reproduction, and in connection with the licensing of the use and reproduction, of any Sampled Material in any Recording hereunder, so that Company shall enjoy the full and perpetual rights otherwise granted to Company pursuant to Article 7 hereunder with respect to Recordings hereunder; at Company's request, you shall supply Company with fully executed copies of any such consents, licenses and other related documentation. You shall be solely responsible for and shall account for and pay to any and all Persons who own or control Sampled Material any monies or other compensation to which such Persons are entitled as a result of any use hereunder by Company of any Recording embodying such Sampled Material. Notwithstanding anything to the contrary expressed or implied herein, no royalties, Advances or other monies shall be earned by or be payable to you hereunder or otherwise in connection with any Record embodying any Sampled Material, and no Recording embodying Sampled Material shall be deemed Delivered hereunder unless and until you have obtained, on Company's behalf, all rights required hereunder with respect to such Sampled Material, and, if Company requests, until Company receives documentation satisfactory to Company with respect thereto.

4.03. Nothing in this Agreement shall obligate Company to continue or permit the continuation of any recording session or project, even if previously approved hereunder, if Company reasonably anticipates that the Recording Costs plus all other Advances attributable to the recording session or project concerned shall exceed 110 percent of those specified in the approved budget therefor, or that the Recordings being produced shall not be commercially satisfactory to Company for the manufacture and sale of Records.

5. RECOUPABLE AND REIMBURSABLE COSTS:

5.01.(a) Company shall pay all Recording Costs incurred in connection with the production of Recordings under this Agreement consistent with the approved budget therefor. All Recording Costs paid or incurred by Company shall constitute Advances.

(b) All costs paid or incurred by Company in connection with the production of, and/or the acquisition of rights in, audiovisual works embodying your performances shall constitute Advances subject to subparagraph 14.01(b) below.

(c) All direct expenses paid or incurred by Company in connection with independent promotion or marketing of Recordings of your performances (*i.e.*, promotion or marketing by Persons other than regular employees of Company) shall constitute Advances.

(d) All costs paid or incurred by Company with respect to any trademark search, or registration in connection with any name or sobriquet now or hereafter used or proposed to be used by you under this Agreement, shall constitute Advances.

(e) All monies paid by Company to you during the Term, other than royalties paid pursuant to Articles 9 and 12, shall constitute Advances unless otherwise expressly agreed in writing by an authorized officer of Company. Each payment (except such royalties) made by Company during the Term to another Person on behalf of you shall also constitute an Advance if it is made with your consent, if it is required by law, or if it is made by Company to satisfy an obligation incurred by you in connection with the subject matter of this Agreement.

5.02. Notwithstanding anything to the contrary contained herein, any costs or expenditures which are payable by you or chargeable against your royalties which are applicable to any Joint Recordings shall be computed by apportionment as provided in paragraph 10.01.

6. ADDITIONAL ADVANCES:

6.01.(a) Promptly after your Delivery to Company of the Recordings constituting an Album in satisfaction of the Recording Commitment, Company shall pay you an Advance in the amount by which $_____ (the "Recording Fund") exceeds the Recording Costs for the Album.

(i) The amount of the Recording Fund for the first Album Delivered pursuant to your Recording Commitment for the first Contract Period shall be $_____ .

(ii) The amount of the Recording Fund for each Album of your Recording Commitment other than the first Album Delivered pursuant to your Recording Commitment for the first Contract Period shall be two-thirds (2/3) of whichever of the following amounts is less (subject to section 6.01 (a)(iii) below):

(A) the amount of the royalties (other than Mechanical Royalties) credited to your account on Net Sales Through Normal Retail Channels in the United States of the Album, made under this Agreement, released most recently before the Delivery of the Album concerned, as determined by Company from its most recent monthly trial balance accounting statement before the date on which the Album concerned is Delivered or required to be Delivered under Article 3 (whichever date is earlier) after deduction of reserves for returns and credits not exceeding 20 percent of the aggregate number of units of that Album shipped to Company's customers; or

(B) the average of the amounts of such royalties on the two such Albums released most recently before the Delivery of the Album concerned.

(iii) No Recording Fund shall be less than the applicable minimum amount or more than the applicable maximum amount set forth below:

	Minimum	Maximum
(A) Album recorded during the second Contract Period:	$_____	$_____
(B) Albums recorded during the third or fourth Contract Periods:	$_____	$_____
(C) Albums recorded during the fifth or sixth Contract Periods:	$_____	$_____
(D) Albums recorded during the seventh or eighth Contract Periods:	$_____	$_____

(b) Each Advance provided for in subparagraph 6.01(a) above, shall be reduced by the amount of any anticipated costs of mastering or remixing, and the estimated amount of any Recording Costs incurred but not yet billed to Company; any such anticipated or estimated amounts which are deducted but not incurred shall be remitted to you. If any Album other than the first Album recorded during the first Contract Period is not Delivered within the time prescribed in Article 3, the Recording Fund for that Album shall be $_____ .

6.02.(a) The aggregate amount of the compensation paid to you under this Agreement shall not be less than the Designated Dollar Amount (as defined below) per Fiscal Year. "Fiscal Year," in this paragraph, means the annual period beginning on the date of commencement of the Term, and each subsequent annual period through the seventh such annual period, during the Term.

(b) If you have not received compensation equal to the Designated Dollar Amount under this Agreement for a Fiscal Year, Company shall pay you the amount of the deficiency before the end of that Fiscal Year; at least forty days before the end of each Fiscal Year you shall notify Company if you have not received compensation equal to the Designated Dollar Amount under this Agreement for that Fiscal Year, and of the amount of the deficiency. Each such payment shall constitute an Advance and shall be applied in reduction of any and all monies due or becoming due to you under this Agreement. Company may not withhold or require you to repay any payment made to you pursuant to or subject to this paragraph 6.02.

(c) As used in this paragraph 6.02, the "Designated Dollar Amount" shall be:

(i) $9,000.00 for the first Fiscal Year of this Agreement;

(ii) $12,000.00 for the second Fiscal Year of this Agreement; and

(iii) $15,000.00 for each of the third through seventh Fiscal Years of this Agreement.

If in any Fiscal Year the aggregate amount of the compensation paid to you under this Agreement exceeds the Designated Dollar Amount, such excess compensation shall apply to reduce the Designated Dollar Amount for any subsequent Fiscal Years.

(d) You acknowledge that this paragraph is included to avoid compromise of Company's rights (including Company's entitlement to injunctive relief) by reason of a finding of applicability of California law, but does not constitute a concession by Company that California law is actually applicable.

6.03.(a) A "qualifying recompilation Album," in this paragraph 6.03, means an Album, such as a "Greatest Hits" or "Best of" Album, consisting of: (i) Recordings made under this Agreement and previously released in different Album combinations; and (ii) new Recordings (the "New Recordings" below) of at least three Compositions, made expressly for initial release in that Album and not applicable in reduction of your Recording Commitment.

(b) Within thirty days after Company's release of a qualifying recompilation Album on Top Line Phonograph Records sold Through Normal Retail Channels in the United States, Company shall pay you an Advance in the amount by which $_____ (the "Qualifying Recompilation Album Fund") exceeds the Recording Costs for the New Recordings. No other Advance shall be payable in connection with the New Recordings. Each such Advance shall

be reduced as provided in the first sentence of subparagraph 6.01(b). If your royalty account is in an unrecouped position (*i.e.*, if the aggregate of the Advances and other recoupable items charged to that account at the time of payment of that Advance exceeds the aggregate of the royalties credited to that account at the end of the last semi-annual royalty accounting period), the Qualifying Recompilation Album Fund shall be reduced by the amount of the unrecouped balance.

6.04. All Advances paid by Company to you pursuant to the terms of this Article 6 shall be deemed specifically to include all session union scale payments which may be required to be made pursuant to the terms of any applicable union agreements, and you agree to complete any documentation required by any applicable union or which may otherwise be necessary for Company to fulfill Company's obligations with respect to any union.

7. RIGHTS IN RECORDINGS:

7.01. You hereby agree that each Recording made or furnished to Company by you either under this Agreement or during the Term (a "Master Recording" or "Master" hereunder), from the Inception of Recording, shall be considered a work made for hire for Company. To the extent any such Master Recording is determined not to be a work made for hire for Company, you hereby assign to Company all right, title and interest in and to such Master Recording together with all rights (including copyright and other proprietary rights) in and to such Master Recording throughout the Territory in perpetuity. In addition, you hereby waive all so-called "moral rights" or any equivalent thereof otherwise available to you in connection with each such Master Recording. For all purposes, including for purposes of copyright law, Company is and shall be deemed the exclusive owner and author of all Masters, and all Records or other duplications in whatever form now or hereafter known, manufactured therefrom, together with the performances embodied therein, shall from the Inception of Recording be the sole property of Company in perpetuity, throughout the Territory, free from any claims by you or any other Person; and Company shall have the exclusive right to register the copyright in those Masters in Company's name as the author and owner of them and to secure any and all renewals and extensions of copyright throughout the Territory.

7.02. Without limiting the generality of the foregoing, Company and any Person authorized by Company shall have the unlimited, exclusive rights, throughout the Territory: (a) to manufacture Records, in any form and by any method now or hereafter known, derived from the Masters; (b) to sell, transfer or otherwise deal in the same under any trademarks, trade names and labels, or to refrain from such manufacture, sale and dealing; (c) to reproduce, adapt, transmit, distribute, communicate, make available and otherwise use the Masters in any medium and in any manner, including but not limited to use in audiovisual works, without payment of any compensation to you except the payments, if any, which may be expressly prescribed for the use concerned under Article 9; and (d) to publicly perform, exhibit, publicly display, make available or to permit the public performance of the Masters by means of radio broadcast, cable transmission, satellite transmission, television broadcast, digital audio transmission or any other method now or hereafter known.

7.03. You hereby irrevocably authorize, empower, and appoint Company your true and lawful attorney (a) to initiate and compromise any claim or action against infringers of Company's or your rights in the Masters; and (b) to execute in your name any and all documents and/or instruments necessary or desirable to accomplish the foregoing. The power of attorney granted under this paragraph 7.03 is coupled with an interest and is irrevocable.

8. MARKETING:

8.01.(a) Company and Company's Licensees shall have the perpetual right, without any liability to any Person, to use and to authorize other Persons to use the names (including, without limitation, all professional, group and other assumed or fictitious names or sobriquets), likenesses and biographical material of or relating to you, and the names (including all professional, group and other assumed or fictitious names or sobriquets), likenesses and biographical material of or relating to any producer and any other Person performing services in connection with the Masters, on and in connection with the exploitation of Recordings hereunder, on Internet websites and for purposes of advertising, promotion and trade and in connection with the marketing and exploitation of Records hereunder and Company's general goodwill advertising (advertising designed to create goodwill and prestige and not for the purpose of selling any specific product or service), without payment of additional compensation to you, you or any other Person. Company and its Licensees shall have the exclusive right, throughout the world, and shall have the exclusive right to authorize other Persons, to create, maintain and host any and all websites relating to you (and any member thereof) and to register and use the name "_____[*e.g.*, Artist name].com" and any variations thereof which embody your name (or the name of any member thereof) as Uniform Resource Locators ("URL's"), addresses or domain names (and, if you (or any member thereof) adopts a new name in accordance with this subparagraph, such new name(s) in URL's, addresses or domain names) for each website created by Company in respect of you (or any member thereof) (each, an "Artist Site"). All such websites, all elements thereof, and all rights thereto and derived therefrom shall be Company's property throughout the Territory and in perpetuity. At Company's reasonable request, you shall actively promote and support you Sites, including, without limitation, by providing current pictures, graphics, and editorial content in connection with the initial release of each Album Delivered in fulfillment of the Recording Commitment, by engaging in a reasonable number of activities by which you interacts with the website visitors, and by participating in other online promotions. You warrant and represent that the use of such names, likenesses, and biographical materials as described above in this subparagraph 8.01(a) shall not infringe upon the rights of any Person. If any Person challenges your right to use a professional name, Company may, at Company's election and without limiting any of Company's other rights and remedies, require you to cause you to adopt another professional name to be selected by you and approved by Company in Company's reasonable discretion without awaiting the determination of the validity of such challenge. Furthermore, during the Term, you shall not change the name by which you is professionally known without the prior written approval of Company.

(b) Without limiting the generality of any of Company's rights under this Agreement, Company and its Licensees shall have (i) the exclusive right, and may grant other Persons the right, to use reproductions or adaptations of packaging artwork, pictorial and graphic materials used for marketing or publicity, and other materials owned or controlled by Company or its Licensees, whether or not incorporating your name (including, without limitation, professional, group, or other assumed or fictitious names or sobriquets used by you), portraits, pictures, likenesses and logos, on merchandise of any kind (including without limitation the digitally distributed products and services described in subparagraph (ii)(B) below, in this subparagraph 8.01(b)); and (ii)(A) the exclusive right, and may grant other Persons the right, to use spoken word Recordings of your performances in connection with digitally distributed products and services (*e.g.*, digital content distributed via cellular phones, personal computers and other consumer electronic equipment and so-called interactive voice response services), and (B) the non-exclusive (except as otherwise provided in this Agreement) right, and may grant other Persons the right, to use your name (including, without limitation, professional, group, or other assumed or fictitious names or

sobriquets used by you), portraits, pictures, likenesses, and logos, in connection with digitally distributed products and services. Company and its Licensees shall have no obligation to pay any additional compensation to you or any other Person in connection with Company's or its Licensees' uses under this paragraph, except as provided in subparagraph 9.08(b) below. For purposes of this Agreement, uses by Company or its Licensees as described in this paragraph are hereby defined as "Merchandise Uses" herein.

8.02.(a) As Company reasonably requests, you shall appear for photography, poster, cover art, and the like, under the direction of Company or Company's designees and to appear for interviews with representatives of the communications media and Company's publicity personnel, at Company's expense.

(b) As Company reasonably requests, you shall perform for the recording of brief audio, visual, and/or audiovisual spoken-word recorded messages and fan greetings suitable for use on and in connection with digital products and services and/or digital media platforms (*e.g.*, Internet and wireless). In addition, as Company reasonably requests, you shall perform for the recording, by means of film, videotape or other audiovisual media, of performances of Compositions embodied on Masters (*e.g.*, Videos) and other audiovisual performances by you (*e.g.*, so-called "B-roll" and "behind-the-scenes" footage) suitable for use on and in connection with Records embodying your performances. You shall Deliver all such Recordings made under this subparagraph 8.02(b) to Company promptly after the production thereof.

(c) If you request by notice, Company shall make available to you for your approval, at Company's offices, any pictures of you or biographical material about you which Company proposes to use for packaging, advertising or publicity in the United States during the Term. Company shall not use any such material which you disapprove in writing, provided you furnish substitute material, satisfactory to Company in Company's sole discretion, in time for Company's use within its production and release schedules. This paragraph shall not apply to any material previously approved by you or used by Company. No inadvertent failure to comply with this paragraph shall constitute a breach of this Agreement, and you shall not be entitled to injunctive relief to restrain the continuing use of any material used in contravention of this paragraph.

8.03. [*Optional clause:*] During the Term, in respect of Phonograph Records manufactured by Company and distributed for sale to its retail distribution accounts in the United States, Company shall not, without your consent and notwithstanding anything in Article 9:

(a) Couple any of the Masters with Recordings not embodying your performances on Phonograph Records released as Singles; or, with respect to any other Phonograph Records, so couple more than two of the Masters on each such Phonograph Record, except promotional Records, Records described in the last sentence of paragraph 10.03, or Records created by Company's custom marketing operations for sale to educational institutions.

(b) Sell Top Line Albums derived from any of the Masters as "cut-outs," within 18 months after the initial release of the Recording concerned on Records in the United States.

8.04. [*Optional clause:*] Company shall not use the Masters on "Premium Records" without your consent and notwithstanding anything in Article 9. A "Premium Record" is a Phonograph Record, other than Records described in the last sentence of paragraph 10.03, produced for use in promoting the sale of merchandise other than Records, which bears the name of the sponsor for whom the Phonograph Record is produced.

8.05. [*Optional clause:*] Company shall not release "outtakes" on Phonograph Records without your consent. ("Outtakes" are preliminary or unfinished versions of the Masters released on Records.)

8.06. [*Optional clause:*] Provided you have fulfilled all your obligations under this Agreement, Company shall release each Album recorded in fulfillment of your Recording Commitment in the United States within three months following Delivery of the Album concerned. If Company fails to do so you may notify Company, within thirty days after the end of the three-month period concerned, that you intend to terminate the Term unless Company physically releases the Album within sixty days after Company's receipt of your notice (the "U.S. Release Cure Period"). If Company fails to physically release the Album in the United States before the end of the U.S. Release Cure Period you may terminate the Term by giving Company notice within thirty days after the end of the U.S. Release Cure Period. On receipt by Company of your termination notice, the Term shall end and all parties shall be deemed to have fulfilled all of their obligations hereunder except those obligations which survive the end of the Term (*e.g.*, warranties, re-recording restrictions and obligations to pay royalties). Your only remedy for failure by Company to physically release an Album in the United States shall be termination in accordance with this subparagraph. If you fail to give Company either of the notices described in the foregoing provisions of this paragraph, within the time periods specified, your right to terminate shall lapse. The running of the three-month and sixty-day periods referred to above shall be suspended (and the expiration date of each of those periods shall be postponed) for the period of any suspension of the running of the Term under paragraph 15.03. If any such three-month or sixty-day period would otherwise expire on a date between October 15 and the next January 16, the running of the applicable period shall be suspended for the duration of the period between October 15 and January 16 and its expiration date shall be postponed by the same number of days (*i.e.*, 92 days).

8.07. [*Optional clause:*] In preparation for the initial physical release in the United States of each Album of the Recording Commitment, Company shall undertake to consult with you regarding the proposed Album cover layout and the picture or art to be used on the cover. Company's decision on all packaging elements shall be final. All rights in any artwork or related material furnished or selected by you or used at your request, including the copyright and the right to secure copyright, shall be Company's property throughout the Territory and in perpetuity. The first sentence of this paragraph shall apply only to Albums Delivered within ninety days after the end of the time prescribed in Article 3.

9. ROYALTIES:

9.01. Company shall accrue to your royalty account, in accordance with the provisions of Article 11 below, royalties as described below; provided, however, no royalties shall be due and payable to you until such time as all Advances have been recouped by or repaid to Company. Royalties shall be computed by applying the applicable royalty percentage rate specified below in this Article 9 to the applicable Royalty Base Price in respect of the Net Sales of Records described in the paragraph (or subparagraph) concerned, except where such royalties are accrued on a Net Receipts basis for which the provisions of paragraph 14.20 below shall govern.

(a) The royalty rate (the "Basic U.S. Rate") in respect of Net Sales of Records (other than Audiovisual Records) consisting entirely of Masters made during the respective Contract Periods specified below and sold by Company Through Normal Retail Channels in the United States ("USNRC Net Sales") shall be as follows:

TYPE OF	CONTRACT	BASIC U.S.

RECORD	PERIODS	RATES	
	Albums	1st and 2nd	_____ %
	Albums	3rd and 4th	_____ %
	Albums	5th and 6th	_____ %
	Albums	7th	_____ %
	Seven-inch Singles	All%	_____ %
	Twelve-inch Singles	All	_____ %
	Digital Sides	All	_____ %
	EPs	All	_____ %

(b) The royalty rate (the "Escalated U.S. Rate") in respect of USNRC Net Sales of each Album recorded pursuant to your Recording Commitment in excess of the following number of units, shall be the applicable rate set forth below rather than the otherwise applicable Basic U.S. Rate or any prior and otherwise applicable Escalated U.S. Rate:

ALBUM	USNRC NET SALES UNITS	ESCALATED U.S. RATES
Albums in first and second Contract Periods	500,000 units 1,000,000 units	_____ %
Albums in third and fourth Contract Periods	500,000 units 1,000,000 units	_____ %
Albums in fifth and sixth Contract Periods	500,000 units 1,000,000 units	_____ %
Albums in seventh Contract Period	500,000 units 1,000,000 units	_____ %

9.02. The royalty rate (the "Foreign Rate") on Net Sales of Records (other than Audiovisual Records) sold for distribution Through Normal Retail Channels outside of the United States by Company, or by Company's principal Licensee in the territory concerned, shall be computed at the applicable percentage of the Basic U.S. Rate that otherwise would be applicable to USNRC Net Sales of the applicable Record as follows:

TERRITORY	% OF BASIC U.S. RATE
Canada	75%
U.K. and Japan	66 2/3%
Rest of the World75%	50%

If any Company Licensee accounts to Company on the basis of less than 100 percent of Net Sales, Company shall account to you for the Records concerned on the same basis, but not

on less than 90 percent of Net Sales.

9.03.(a) With respect to Records (other than Audiovisual Records) licensed by Company for sale through any Club Operation in the United States, Company shall pay you 50 percent of Company's Net Receipts solely attributable to the Masters.

(b) With respect to Records (other than Audiovisual Records) sold through any Club Operation outside of the United States, the applicable Foreign Rate shall be 5 percent multiplied by the applicable percentage of the Basic U.S. Rate set forth in paragraph 9.02 above for the country concerned.

(c) No royalty shall be payable with respect to: (i) Records received by members of any Club Operation in an introductory offer in connection with joining it or upon recommending that another join it or as a result of the purchase of a required number of Records including, without limitation, Records distributed as "bonus" or "free" Records; or (ii) Records for which the Club Operation is not paid. Notwithstanding the foregoing, at least 50 percent of all Phonograph Records distributed through any Club Operation during the Term, on which you would otherwise be entitled to a royalty under this paragraph 9.03 (without regard to the first sentence of this subparagraph 9.03(c)), shall be deemed to have been sold. Such computations shall be made on a cumulative basis, and your royalty account adjusted accordingly, each sixth accounting period upon your request.

9.04. The royalty rate on any Record described in section (i), (ii) or (iii) of this sentence shall be one-half (1/2) of the royalty rate hereunder that would otherwise apply if the Record concerned were sold Through Normal Retail Channels: (i) any catalog Record sold by Company to educational institutions or libraries, or to other clients of Company for their promotion or sales incentive purposes; (ii) any Record sold in conjunction with a substantial television advertising campaign, at any time during the period commencing on the first day of the calendar semi-annual period in which that campaign begins and ending on the last day of the second calendar semi-annual period thereafter; and (iii) any non-catalog Record created on a custom basis for clients of Company.

9.05.(a) The royalty rate on any Budget Record shall be one-half (1/2) of the Basic U.S. Rate, the Foreign Rate or other royalty rate that would otherwise apply if the Record concerned was sold Through Normal Retail Channels. The royalty rate on a Mid-price Record or any Record sold through military exchange channels shall be two-thirds (2/3) of the Basic U.S. Rate, the Foreign Rate or other royalty rate that would otherwise apply if the Record concerned was sold Through Normal Retail Channels. (The immediately preceding two sentences shall not apply to Albums Delivered in fulfillment of the Recording Commitment (other than the first such Album) that are sold as Budget Records in the United States within twelve months, or as Mid-price Records in the United States within six months, after the initial release of the Masters concerned on Records in the United States.) The royalty rate on any type of Record which is not identified in paragraph 9.01 above shall be one-half (1/2) of the otherwise applicable Basic U.S. Rate or Foreign Rate for Albums in the configuration concerned set forth in paragraph 9.01 or 9.02 above.

(b) The royalty rate on a Multiple Record Set shall be one-half (1/2) of the otherwise applicable royalty rate set forth in this Article 9 if the Royalty Base Price of that Multiple Record Set is the same as the Royalty Base Price applicable to Top Line single-unit Records in the same configuration marketed by Company or Company's principal Licensee in the territory concerned at the beginning of the royalty accounting period concerned. If a different Royalty Base Price applies to a Multiple Record Set, the royalty rate prescribed in the preceding sentence shall be adjusted in proportion to the variance in the Royalty Base

Price, provided that in no event shall it be more than the otherwise applicable royalty rate set forth in this Article 9.

9.06.(a) The royalty rate on Net Sales of Audiovisual Records which contain Masters hereunder and are manufactured and distributed or digitally transmitted by Company or Company's distributor in the United States or by any international components of Company or Company's distributor ("Foreign Distributor," below) elsewhere, shall be 10 percent on units distributed in the United States and 7 percent on units distributed outside the United States. Notwithstanding the immediately preceding sentence, on such units distributed through Club Operations, such royalty rates shall be the lower of: (x) 50 percent of the foregoing applicable rate set forth in this section 9.06(a)(1) or (y) 10 percent of the Club Operation's selling price.

(b)(i) With respect to uses of Videos which produce revenues directly for Company, other than the uses described in subparagraph 9.07(a), Company shall pay you a royalty equal to a percentage of Company's Net Receipts derived from such uses (the "Net Receipts Royalty"), in accordance with the provisions of paragraph 9.08 below.

(ii) The uses on which the Net Receipts Royalty shall be payable include, without limitation, uses on Audiovisual Records manufactured for distribution by divisions of Company or any of its international components, or joint ventures in which they participate, other than those specified in subparagraph 9.06(a).

(c) The following amounts shall be charged in reduction of all royalties payable or becoming payable to you in connection with uses of audiovisual Recordings under this paragraph 9.06:

(i)(A) All royalties and other compensation which may become payable to any Person, notwithstanding paragraphs 12.02 and 12.03, for the right to make any uses of Controlled Compositions in audiovisual Recordings; and (B) 50 percent of all such amounts which may become payable in connection with other Compositions.

(B)(1) All payments to record producers or other Persons, except those referred to in clause (2) of this sentence, which are measured by uses of audiovisual Recordings or proceeds from those uses, whether such payments are to be computed as royalties on sales, as participations in revenues, or in any other manner; and (2) 50 percent of all such payments which are attributable to the production of Videos. (The amounts chargeable under this section 9.06(c)(B) shall not include non-contingent advances, but shall include payments, including payments in fixed amounts, which accrue by reason that such sales, revenues or other bases for computation attain particular levels.)

9.07.(a) Company shall credit your royalty account hereunder with an amount equal to 50 percent of Company's Net Receipts from any royalty or other payment paid to Company and directly attributed to a Master Recording licensed by Company to another Person for use: (i) in the manufacture and distribution of Phonograph Records, provided that such credit to your royalty account shall not exceed the same royalty amount that would otherwise be credited to your account hereunder for such use if Company manufactured or distributed the Phonograph Record concerned; or (ii) in synchronization with theatrical motion pictures, television programs, or radio or television commercials.

(b) Provided that a royalty or other payment is not otherwise provided for such uses elsewhere in this Article 9, including, without limitation, pursuant to paragraph 9.07(a) above, in respect of any license of a Master Recording by Company to another Person, or in respect of any Ancillary Exploitation, for which license or Ancillary Exploitation (as

applicable) Company receives a royalty or other payment that is readily and directly attributed to the use of such Master Recording or such Ancillary Exploitation (as applicable) (the "Per-Use Fee"), Company shall credit your royalty account hereunder with an amount equal to a percentage of Company's Net Receipts from such Per-Use Fee which is the same as the percentage of the applicable Basic U.S. Rate or Foreign Rate for Albums or Digital Sides, as applicable, or, in the case of Audiovisual Records, the rate set forth in section 9.07(a)(i) above sold for distribution in the country concerned, provided that such credit to your royalty account in respect of Masters shall not exceed the amount that would otherwise be credited to your account hereunder for a Top Line sale Through Normal Retail Channels of a comparable Record if sold by Company in the applicable territory. Notwithstanding anything to the contrary in this subparagraph 9.08(b), any Merchandise Use as part of the same commercial transaction as an exploitation of a Master Recording, for which Company receives or is credited with a royalty or other payment that is readily and directly attributable to such combined exploitation, shall be treated for purposes of calculating the payments payable to you hereunder, solely as a sale or license of a Master Recording under paragraph 9.01 or subparagraph 9.07(b), as applicable.

(c) If another recording artist, producer or any other Person is entitled to a royalty or other payment with respect to the same use of a Master Recording or the same Ancillary Exploitation as provided for under this paragraph 9.07, the amount to be credited to your royalty account under this paragraph shall be apportioned in the same ratio as that among your and that other Person's respective basic royalty percentages.

(d) All payments and credits pursuant to this paragraph 9.07 shall be deemed specifically to include all payments which may be required to be made pursuant to the terms of any applicable union agreements. For purposes of this paragraph 9.07 only, "Company" shall be deemed to refer to Company with respect to Records sold for distribution in the United States or Canada, and, with respect to distribution of Records in territories other than the United States or Canada shall be deemed to refer to Company's principal Licensee in the territory concerned.

10. MISCELLANEOUS ROYALTY PROVISIONS:

Notwithstanding anything to the contrary contained in Article 9:

10.01. In respect of Joint Recordings, the royalty rate to be used in determining the royalties payable to you hereunder shall be computed by multiplying the royalty rate otherwise applicable thereto by a fraction, the numerator of which shall be one and the denominator of which shall be the total number of royalty artists whose performances are embodied on a Joint Recording.

10.02. The royalty rate (the "Apportioned Royalty") on a Record embodying Masters hereunder together with other Recordings shall be computed by multiplying the royalty rate otherwise applicable by a fraction, the numerator of which is the number of Sides embodying Masters hereunder and the denominator of which is the total number of Sides contained on such Record. Notwithstanding the foregoing, the Apportioned Royalty on an Audiovisual Record shall in no event exceed the royalty rate which would apply if the Apportioned Royalty were computed by apportionment based on the actual playing time of each Recording embodied in the Record concerned. To the extent that any such Audiovisual Record embodies an audio-only Master Recording hereunder (as distinguished from a Video hereunder), the applicable Apportioned Royalty shall be one-half (1/2) of the Apportioned Royalty that would otherwise apply under this paragraph 10.02.

10.03. No royalties shall be payable to you in respect of Records sold or distributed by Company or Company's Licensees for promotional purposes; as surplus, overstock or scrap; as cutouts after the listing of such Records has been deleted from the catalog of Company or the particular Licensee; as "free," "no charge" or "bonus" Records (whether or not intended for resale; whether billed or invoiced as a discount in the price to Company's customers or as a Record shipped at no charge); to Company employees and their relatives; to radio stations; as server, ephemeral or incidental copies; as excerpts that are thirty seconds or less in duration; or in territories where the Recordings concerned are in the public domain. No royalties shall be payable to you on Records containing Recordings of not more than two Masters hereunder, intended for free distribution as "samplers" to automobile or audio equipment manufacturers, distributors and/or purchasers (whether or not postage, handling or similar charges are made); for Records distributed for use on transportation carriers; or for Records distributed for use in jukeboxes.

10.04. If legislation requiring the payment of copyright royalties for the public performance of Records is enacted in the United States and Company receives such royalties with respect to Masters hereunder, and you do not receive or waive any similar payment from any Person other than Company, then Company shall credit your royalty account with that portion of such royalties as required by Company's collective bargaining agreement with the American Federation of Musicians or the American Federation of Television and Radio Artists, whichever is applicable. In respect of Joint Recordings, that portion shall be determined as provided in paragraph 10.01, unless a different method of apportionment is required under the applicable collective bargaining agreement. If no such agreement applies, Company shall negotiate with you in good faith regarding the sharing of any such royalties with you.

11. ROYALTY ACCOUNTINGS:

11.01.(a) Company shall compute your royalties as of each June 30 and December 31 for the prior six months, in respect of each such six-month period in which there are sales or returns of Records or any other transactions on which royalties are payable to you hereunder or liquidations of reserves established previously. On the next September 30th or March 31st Company shall send you a statement covering those royalties and shall pay you any royalties which are due after deducting unrecouped Advances.

(b) Company shall have the right to establish during each semi-annual accounting period a royalty reserve against anticipated returns and credits, or anticipated payments referred to in subparagraph 9.07(c) above, of up to 25 percent of the royalty earnings associated with the units of each Record reported as distributed to Company's and its Licensees' customers in that period. (Notwithstanding the preceding sentence, Company may establish a larger reserve if any such Record is sold subject to return privileges more liberal than Company's normal return policies, or if Company anticipates returns and credits which justify the establishment of such a larger reserve in Company's sole discretion.) Each royalty reserve shall be liquidated equally and in full over the four semi-annual accounting periods following the accounting period during which the applicable reserve is initially established. If you reasonably believe that the royalty reserve established during any accounting period is excessive, then, promptly following your request by notice to Company within sixty days after the date on which Company is deemed to have sent you an accounting statement for such accounting period under paragraph 11.03 below, Company will review the reserves established during such accounting period and will make such adjustments as Company may determine are appropriate, in its reasonable judgment, based on sales reports for your Records, your sale and returns history, and any other factors that Company deems relevant. If Company makes any overpayment to you, you shall reimburse Company for that

overpayment; Company may also deduct any overpayment from any monies due or becoming due to you. If Company pays you any royalties on Records which are returned later or on other transactions which are reversed, those royalties shall be considered overpayments.

11.02. Company shall compute your royalties in the same national currency in which Company's Licensee pays Company for that sale, and Company shall credit those royalties to your account at the same rate of exchange at which the Licensee pays Company. For purposes of accounting to you, Company shall treat any sale outside of the United States as a sale made during the same six-month period in which Company receives Company's Licensee's accounting and payment for that sale. (For the purposes of this paragraph, only, any royalties credited by a Licensee to Company's account but charged in recoupment of a prior advance made to Company and retained by the Licensee by reason of that charge shall be deemed paid to Company and received by Company when Company receives the Licensee's accounting reflecting the credit and charge concerned.) If any Company Licensee deducts any taxes from its payments to Company, Company may deduct a proportionate amount of those taxes from your royalties. If any law, any government ruling, or any other restriction affects the amount of the payments which a Company Licensee can remit to Company, Company may deduct from your royalties an amount proportionate to the reduction in the Licensee's remittances to Company. If Company cannot collect payment in the United States in U.S. Dollars, Company shall not be required to account to you for that sale, except as provided in the next sentence. Company shall, at your request and at your expense, deduct from the monies so blocked and deposit in a foreign depository the equivalent in local currency of the royalties which would be payable to you on the foreign sales concerned, to the extent such monies are available for that purpose, and only to the extent to which your royalty account is then in a fully recouped position. All such deposits shall constitute royalty payments to you for accounting purposes.

11.03.(a) Company shall maintain Books and Records which you may examine, at your expense. You may make those examinations only for the purpose of verifying the accuracy of royalty accountings rendered to you under paragraph 11.01. You may make such an examination only once during each twelve-month period, only once for a particular accounting period, and only within three years after the end of an accounting period with respect to accountings during the period concerned. You may make those examinations only during Company's usual business hours, on reasonable written notice for a reasonably convenient time, and at the place where Company keeps the Books and Records to be examined. You may appoint a qualified royalty auditor to make such an examination for you. The rights hereinabove granted to you shall constitute your sole and exclusive rights to examine Company's books and records.

(b) If, in the course of any examination, made in accordance with paragraph 11.03(a), of royalties payable to you under Article 9, you and Company agree in writing that there has been an undercrediting of royalties to your royalty account or accounts hereunder exceeding 10 percent of the total royalties credited by Company to such accounts in the aggregate for the periods covered by such examination, or if an undercrediting of royalties exceeding such amount is determined in a final non-appealable judgment by a court of competent jurisdiction, Company will pay interest to you on any portion of such agreed-upon or court-determined undercrediting of royalties that is paid to you at the time of such agreement or determination, at the prime rate in effect on the date on which Company is deemed to have sent you the royalty statement for the last accounting period covered by the examination, as such rate is quoted in the "Money Rate" section of The Wall Street Journal (or, if The Wall Street Journal is discontinued or is no longer quoting such rate, any other similarly reputable published source), calculated from the date such royalties were payable.

11.04. You acknowledge that Company's Books and Records contain confidential trade information and you warrant and represent that neither you nor your representatives shall communicate to others or use on behalf of any other Person any facts or information obtained as a result of such examination of Company's Books and Records.

11.05. If you have any objections to a royalty statement, you shall give Company specific notice of that objection and your reasons therefor within three years after the end of an accounting period with respect to accountings during the period concerned. Each royalty statement shall become conclusively binding on you at the end of that three-year period, and you shall no longer have any right to make any other objections to the statement. You shall not have the right to sue Company in connection with any royalty accounting, or to sue Company for royalties on Records sold or Net Receipts derived by Company during any period a royalty accounting covers, unless you commence the suit within six months after the end of that three-year period. If you commence suit on any controversy or claim concerning royalty accountings rendered to you under this Agreement, (a) any recovery thereon shall be limited to money damages only, and (b) you shall not have any right to seek termination of the Term or avoid the performance of your obligations hereunder by reason, in whole or in part, of any such claim. The preceding three sentences shall not apply to any item in a royalty accounting if a court of competent jurisdiction establishes that the item was fraudulently misstated by Company (in which case your right to terminate the Term shall be governed by paragraph 19.07 below).

11.06. You hereby authorize and direct Company to withhold from any monies due you from Company any portion thereof required to be withheld by the United States Internal Revenue Service and/or any other governmental authority, and to pay same to the United States Internal Revenue Service and/or such other authority. No Advances or other payments shall be made pursuant to this Agreement until you have completed the Internal Revenue Service Form attached hereto as Schedule A.

12. LICENSES FOR MUSICAL COMPOSITIONS:

12.01. You hereby grant to Company and Company's Licensees an irrevocable license, under copyright, to reproduce each Controlled Composition on Records of Masters hereunder other than Audiovisual Records, and to distribute those Records in the United States and Canada.

(a) For that license, Company (or Company's Licensees, as applicable) shall pay Mechanical Royalties, on the basis of Net Sales, at the following rates:

(i) On Phonograph Records and Digital Sides sold for distribution in the United States: The rate equal to 75 percent of the minimum compulsory license rate applicable to the use of Compositions on phonorecords under the United States copyright law (which as of the date hereof is nine and one-tenth cents (9.1cent(s)) per Composition) on whichever of the following dates is the earlier: (A) The date of completion of Delivery of the Masters constituting the Album project (or other recording project) concerned; or (B) The date of expiration of the time within which the Recording concerned is required to be Delivered under Article 3.

(ii) On Phonograph Records and Digital Sides sold for distribution in Canada: The rate prescribed in subsection 12.01(a)(i) above, or the rate equal to 75 percent of the lowest Mechanical Royalty rate prevailing in Canada on a general basis on the applicable date specified in subsection 12.01(a)(i) above with respect to the use of Compositions on Top

Line Records, whichever rate is lower.

(iii) On all other Records sold for distribution in the United States: The rate equal to 75 percent of the minimum compulsory license rate (on the applicable date specified in subsection 12.01(a)(i) above) that is implemented by the United States Copyright Office in respect of the use of Compositions on such Records; provided, however, that: (x) if, at the time any such Records are distributed, no such compulsory license rate has been implemented, then Mechanical Royalties for the use of Compositions on such Records shall be paid, after such compulsory license rate has been implemented by the United States Copyright Office, on all such Records (retroactively from the first such Record distributed hereunder); and (y) if at any time legislation is enacted in the United States that expressly prohibits payment of less than the minimum compulsory license rate, then solely with respect to the reproduction of Compositions on such Records, Company shall pay Mechanical Royalties at the minimum compulsory rate so prescribed by law for so long as such legislation remains in effect. The absence of any such compulsory license rate shall not impair the effectiveness of the license granted herein.

(iv) On all other Records sold for distribution in Canada: The rate equal to 75 percent of the lowest Mechanical Royalty rate prevailing in Canada on a general basis (on the applicable date specified in subsection 12.01(a)(i) above) that is applicable to the use of Compositions on such Records; provided, however, that: (y) if, at the time such Records are distributed, no such prevailing rate exists, then Mechanical Royalties for such Records shall be paid after such rate becomes generally applicable on all such Records (retroactively from the first such Record distributed hereunder); and (y) if at any time legislation is enacted in Canada that expressly prohibits payment of less than such prevailing rate, then solely with respect to the reproduction of Controlled Compositions on such Records, Company shall pay Mechanical Royalties at the applicable rate so prescribed by law for so long as such legislation remains in effect. The absence of any such license rate shall not impair the effectiveness of the license granted herein.

(v) The Mechanical Royalty on any Record referred to in paragraphs 9.04 and 9.05, or on any Record sold through a Club Operation, shall be three-fourths (3/4) of the amount fixed above. The preceding sentence shall not apply if the Record concerned is sold through military exchange channels.

(vi) If the Composition is an arranged version of work in the public domain, the Mechanical Royalty on that Composition shall be one-half (1/2) of the applicable amount fixed in section 12.01(a)(i) above. Notwithstanding the foregoing, if ASCAP, BMI or SESAC accords regular performance credit for any Controlled Composition which is an arranged version of a public domain work, the Mechanical Royalty rate on that Composition shall be apportioned according to the same ratio used by ASCAP, BMI or SESAC in determining that performance credit. Company shall not be required to pay you at that rate unless you furnish Company with satisfactory evidence of that ratio.

(vii) Notwithstanding anything to the contrary herein, no Mechanical Royalties or other payments shall be payable for any Records described in paragraph 10.03 or for Compositions which are one hundred seconds or less in length or for uses described in the next sentence. The rights granted to Company herein include the rights to: (A) publicly perform any Controlled Composition by or through any means or manner not otherwise licensed by a performing rights society and (B) incidentally reproduce or reproduce, in the form of server, ephemeral or other transient copies (solely to the extent such use is not otherwise licensed pursuant to a compulsory or voluntary license), any such Controlled Composition in connection with any transmission thereof. In addition, you hereby waive all

so-called "moral rights" or any equivalent thereof otherwise available to you in connection with each such Controlled Composition.

(b)(i) The maximum Mechanical Royalty for all Compositions, including Controlled Compositions, embodied in or transmitted as part of any Album, shall be limited to ten times the amount which would be payable on the Album under section 12.01(a)(i) above if it contained only one Controlled Composition. The maximum Mechanical Royalty shall be limited to two times that amount on any Single, five times that amount on any EP, and three times that amount on any Twelve-inch Single or any other Record which is not an Album, a Single, or an EP.

(ii) The maximum Mechanical Royalty under this subparagraph 12.01(b) on a Multiple Record Set shall be the same amount prescribed in section 12.01(b)(i), if the Royalty Base Price of that Multiple Record Set is the same as the Royalty Base Price applicable to the Top Line single-unit Albums marketed by Company or Company's principal Licensee in the territory concerned at the beginning of the royalty accounting period concerned. If a different Royalty Base Price applies to a Multiple Record Set, the maximum Mechanical Royalty shall be adjusted in proportion to the variance in the Royalty Base Price, provided that in no event shall it be more than twice the maximum royalty prescribed in section 12.01(b)(i).

(c) Company shall compute Mechanical Royalties on Controlled Compositions as of the end of each calendar quarter-annual period in which there are sales or returns of Records on which Mechanical Royalties are payable hereunder, or liquidations of Mechanical Royalty reserves established previously. On the next May 15, August 15, November 15 or February 15, Company shall send a statement covering those royalties and shall pay any net royalties which are due. Each Mechanical Royalty reserve maintained by Company against anticipated returns and credits shall be held for not longer than one year after it is established. Mechanical Royalty reserves shall not be established in accordance with practices less favorable to you than those used generally by Company for purposes of Company's accountings to music publishers represented by the Harry Fox Agency. Paragraphs 11.03, 11.04, 11.05 and 11.06 shall apply to Mechanical Royalty accountings.

12.02. You also grant to Company and Company's Licensees an irrevocable license under copyright to reproduce each Controlled Composition in Videos, to reproduce, distribute, transmit and perform those Videos in any manner (including, without limitation, publicly and for profit), to manufacture and distribute Audiovisual Records and other copies of those Videos, to exploit them otherwise, and to promote, advertise and market Records, and to reproduce lyrics (including translations thereof), of each Controlled Composition, in whole or in part, on and in Records and in any other manner and to manufacture and distribute those Records and exploit them otherwise, each by any method and in any form known now or in the future, throughout the Territory, and to authorize others to do so. Company and Company's Licensees shall not be required to make any payment in connection with those uses, and that license shall apply whether or not Company receives any payment in connection with any use of any Video or other Record. If any exhibition of a Video is also authorized under another license (such as a public performance license granted by ASCAP, BMI or SESAC), that exhibition shall be deemed authorized by that license instead of this Agreement. In all events, Company and Company's Licensees shall have no liability by reason of any such exhibition.

12.03.(a) If any Masters hereunder contain copyrighted Compositions which are not Controlled Compositions, you shall use reasonable efforts to obtain licenses covering those Compositions for Company's and Company's Licensees' benefit on the same terms as those

which apply to Controlled Compositions under this Article 12. In all events you shall obtain licenses covering them for the United States providing for royalties at the minimum rate applicable to the use of Compositions on phonorecords under the compulsory license provisions of the United States copyright law, and licenses covering them for Canada providing for royalties at the lowest rates prevailing in Canada on a general basis with respect to the use of Compositions on comparable Records, and otherwise on terms not less favorable to Company in any respect than those prescribed in the form attached hereto as Schedule B; and subparagraph 12.01(b) shall continue to apply.

(b) You hereby agree that all Controlled Compositions shall be available for licensing by Company and Company's Licensees, for reproduction, distribution, communication, making available and public performance in each country of the Territory outside of the United States and Canada through the author's society or other licensing and collecting body generally responsible for such activities in the country concerned. You shall cause the issuance of effective licenses, under copyright and otherwise, to reproduce each Controlled Composition on Records and distribute, communicate, make available and perform those Records outside the United States and Canada, on terms not less favorable to Company or Company's Licensees than the terms prevailing on a general basis in the country concerned with respect to the use of Compositions on comparable Records.

13. WARRANTIES; REPRESENTATIONS; RESTRICTIONS; INDEMNITIES:

13.01. You warrant and represent that:

(a) You have the right and power to enter into and fully perform this Agreement. If you are a corporation, that you are and shall continuously be a corporation in good standing in the jurisdiction of your incorporation.

(b) Company shall not be required to make any payments of any nature for, or in connection with, the acquisition, exercise or exploitation of rights by Company pursuant to this Agreement except as specifically provided in this Agreement. You shall be solely responsible for: (i) all Recording Costs in excess of the applicable Recording Fund fixed in paragraph 6.01 above (as reduced by any Advances or other payments or expenses which do or are intended to reduce such Recording Fund), or in excess of the approved budget for any Album for which there is no Recording Fund; (ii) all royalties payable to any producers, mixers, remixers or any other Persons contributing to the recording of the Masters (subject to subparagraph 2.02(b) above); (iii) all Mechanical Royalties in excess of the applicable rates and/or the applicable maximum Mechanical Royalties specified in Article 12 above; (iv) all Special Packaging Costs; and (v) all other costs, if any, which are in excess of the fixed amounts provided herein which Company has agreed to pay. All of the amounts set forth in the immediately preceding sentence shall be paid by you promptly (or reimbursed by you if paid by Company). Such amounts may also be deducted from all monies becoming payable to you by Company under this Agreement or otherwise to the extent to which they have not been paid or reimbursed by you as provided in the preceding sentence.

(c)(i) The Masters shall be produced in accordance with the rules and regulations of the American Federation of Musicians, the American Federation of Television and Radio Artists and all other unions having jurisdiction, including without limitation paragraph 31 of the 1997-2001 AFTRA National Code of Fair Practice for Sound Recordings (as modified by any successor agreement); and that all Persons rendering services in connection with the Masters shall fully comply with the provisions of the Immigration Reform Control Act of 1986.

(ii) You are or will become and will remain, to the extent necessary to enable the performance of this Agreement, a member in good standing of all labor unions or guilds, membership in which may be lawfully required for the performance of your services hereunder.

(d)(i) The Materials (as hereinafter defined) or any use thereof, shall not violate any law and shall not infringe upon or violate the rights of any Person (including, without limitation, contractual rights, copyrights, rights of publicity and rights of privacy); and that each Personnel List (as defined in paragraph 14.10, below) furnished hereunder is and shall be true, accurate and complete. "Materials," as used in this Article, means: (A) the Masters hereunder, (B) all Controlled Compositions, (C) each name used by you, individually or as a group, in connection with Masters or the exploitation of Company's rights hereunder, and (D) all other musical, dramatic, artistic and literary materials, ideas, and other intellectual properties, contained in or used in connection with any Masters hereunder or their packaging, sale, distribution, advertising, marketing, promotion, publicizing or other exploitation or the marketing or promotion of you or of Company's rights hereunder. Company's acceptance and/or utilization of Recordings, Materials or Personnel Lists hereunder shall not constitute a waiver of your representations, warranties or agreements in respect thereof, or a waiver of any of Company's rights or remedies.

(ii) Without limitation of the foregoing, you warrant and represent that Company's use of any Masters which embody Sampled Materials, as defined in paragraph 4.02(b) above, shall not infringe upon or violate the rights of any Person (including, without limitation, contractual rights, copyrights, rights of publicity and rights of privacy).

(e) No Person other than Company has any right to use, and during the Term no Person other than Company shall be authorized to use, any existing Recordings of your performances for making, promoting or marketing Records.

13.02.(a) During the Term: (i) You shall not enter into any agreement which would interfere with the full and prompt performance of your obligations hereunder; and (ii) You shall not perform or render any services, as a performing artist, a producer, or otherwise, that result in the making, promoting, broadcasting or marketing Recordings or Records for any Person except Company.

(b)(i) A "restricted Composition," for the purposes of this paragraph only, is a Composition which shall have been recorded by you for a Master hereunder or for a Recording under any other agreement with Company.

(ii) You shall not authorize or knowingly permit your performance of any restricted Composition or any adaptation of a restricted Composition to be recorded for any Person other than Company for the purpose of making Recordings or Records, or for any other purpose (including, without limitation, radio or television commercials), at any time before the later of the following dates: (A) the date five years after the date of Delivery to Company of all the Recordings made in the course of the same Album (or other) recording project as the Recording of the restricted Composition concerned, or (B) the date two years after the expiration of the Term. The period during which such restrictions apply to any particular Composition are sometimes referred to herein as the "Rerecording Restriction Period" for such Composition.

(iii) During the Rerecording Restriction Period, neither you nor any Person deriving rights from you shall authorize the use of any Controlled Composition in a radio or television commercial or any other advertising or promotional matter, unless you first require the

Person to be authorized to make the use concerned to agree in writing, for Company's benefit, that the use shall not involve a "sound-alike" Recording resembling a performance of that Composition recorded by you before or after the date of authorization. (A "sound-alike" Recording is a different Recording which imitates or simulates the Recording concerned by using a substantially similar musical arrangement or otherwise.) If you or any Person deriving rights from you shall determine to grant any rights in any Controlled Composition to any music publisher or any other Person or to authorize the use of any music or lyrics written by you in a Composition together with material written by any other Person, or if you shall determine to collaborate with any other Person in the authorship of any Composition, you shall first require the other Person to the transaction or collaboration concerned to enter into a written agreement, for Company's benefit, requiring compliance with this section 13.02(b)(iii). You shall furnish Company with a fully-executed copy of each agreement required by this section 13.02(b)(iii), promptly after the execution thereof.

(c) You shall not perform for a Person other than Company without an express written agreement with the Person for whom the performance is to be made, for Company's benefit, prohibiting the use of such performance for making, promoting, or marketing Recordings or Records, or for digital broadcasts or other transmissions, distributions or other communications now or hereafter known, in violation of the restrictions prescribed in subparagraphs 13.02(a) and 13.02(b) above. You shall furnish Company with a fully executed copy of each such agreement promptly after the execution thereof.

13.03 Notwithstanding anything to the contrary expressed or implied herein, you may perform as a background instrumentalist or vocalist ("sideman") accompanying a featured artist for the purpose of making Records for others, provided:

(a) You may not do so unless you have then fulfilled all of your obligations under this Agreement, and the engagement does not interfere with the continuing prompt performance of your obligations to Company;

(b)(i) You may not render a solo or "step-out" performance, nor perform on more than one Recording embodied on any Record, and

(ii) The musical style of the Recording may not be substantially similar to the characteristic musical style of Recordings made by you for Company (*i.e.*, likely to cause confusion as to the identity of the featured performer);

(c) You may not record any material which you have previously recorded for Company;

(d) You may not accept the sideman engagement unless the Person for whom the Recordings are being made agrees in writing, for Company's benefit, that:

(i) Your name may be used in a courtesy credit on the Album liners used for such Records, in the same position as the credits accorded to other sidemen and in type identical in size, prominence and all other respects; and

(ii) Except as expressly provided in section 13.03(d)(i) above, neither your name nor any picture, portrait or likeness of you may be used in connection with such Recordings, including, without limitation, on the front covers of Album containers, on sleeves or labels used for single Records, or in videos, advertising, publicity or any other form of promotion or exploitation, without Company's express written consent, which Company may withhold in Company's unrestricted discretion. You shall furnish Company with a fully-executed copy of each such agreement promptly after the execution thereof.

(e) Before you accept the sideman engagement you shall notify Company of the name of the Person for whom the Recordings are being made and the Record company which shall have the right to distribute the Records. Your notice shall be addressed to Company's Vice-President, Business & Legal Affairs. If Company so specifies in a notice to you within ten days after Company receives your notice, you shall not accept the sideman engagement unless you first furnish Company with an agreement by that Person, that Record company, or any other Record company affiliated with it, as specified by Company in Company's notice to you, to permit Company to make similar uses of the services of recording artists of comparable stature under contract to that Person or Record company upon Company's request in the future.

13.04. Notwithstanding anything to the contrary expressed or implied herein, you may serve as a producer for the purpose of making Records for others, provided: (a) You have then fulfilled all of your obligations under this Agreement, and the engagement does not interfere with the continuing prompt performance of your obligations to Company; (b) You shall not produce Recordings of any material which you have previously recorded for Company; (c) You shall not accept the producing engagement unless the Person for whom the Recordings are being produced agrees in writing, for Company's benefit, that: (A) Your name may be used in credits on Record labels and the reverse sides of Record packages, comparable in size and prominence to the credits generally accorded to Record producers, and in advertising and publicity in a manner accurately descriptive of your producing function, and (B) Except as expressly provided in section 13.04(c)(1) above, neither your name nor any picture, portrait or likeness of you shall be used in connection with such Recordings, including, without limitation, on the front of any Record package or in advertising, publicity or any other form of promotion or exploitation, without Company's express written consent, which Company may withhold in Company's unrestricted discretion.

3.05. If you become aware of any unauthorized recording, manufacture, distribution, sale, or other activity by any third party contrary to the provisions of this Agreement, you shall notify Company of that unauthorized activity and shall cooperate with Company in any action or proceeding Company commences against such third party.

13.06. You acknowledge that your services are of a special, unique and extraordinary character which gives them a peculiar value, and that, in the event of a breach of any term, condition, representation, warranty, covenant or agreement contained in this Agreement, Company shall be caused irreparable injury, including loss of goodwill and harm to reputation, which cannot be adequately compensated in monetary damages. Accordingly, in the event of any such breach, actual or threatened, Company shall have, in addition to any other legal remedies, the right to injunctive or other equitable relief. (The preceding sentence shall not be construed to preclude you from opposing any application for such relief based upon contest of other facts alleged by Company in support of the application.)

13.07.(a) You shall at all times indemnify and hold harmless Company and any Licensee of Company from and against any and all claims, losses, damages, liabilities, costs and expenses, including, without limitation, legal expenses and reasonable counsel fees, arising out of any breach or alleged breach by you of any warranty or representation made by you in this Agreement or any other act or omission by you, provided the claim concerned has been settled or has resulted in a judgment against Company or Company's Licensees. Company shall notify you of any action commenced on such a claim. You may participate in the defense of any such claim through counsel of your selection at your own expense, but Company shall have the right at all times, in Company's sole discretion, to retain or resume

control of the conduct of the defense. If any claim involving such subject matter has not been resolved, or has been resolved by a judgment or other disposition which is not adverse to Company or Company's Licensees, you shall reimburse Company for 50 percent of the expenses actually incurred by Company and Company's Licensees in connection with that claim. Pending the resolution of any such claim, Company may withhold monies which would otherwise be payable to you under this Agreement in an amount consistent with such claim. If no action or other proceeding for recovery on such a claim has been commenced within eighteen months after its assertion Company shall not continue to withhold monies in connection with that particular claim under this subparagraph 13.07(a) unless Company believes, in Company's reasonable judgment, that such a proceeding may be instituted notwithstanding the passage of that time.

(b) If Company pays more than $7,500.00 in settlement of any such claim, you shall not be obligated to reimburse Company for the excess unless you have consented to the settlement, except as provided in the next sentence. If you do not consent to any settlement proposed by Company for an amount exceeding $7,500.00 you shall nevertheless be required to reimburse Company for the full amount paid unless you make bonding arrangements, satisfactory to Company in Company's reasonable discretion, to assure Company of reimbursement for all damages, liabilities, costs and expenses (including, without limitation, legal expenses and reasonable counsel fees) which Company or Company's Licensees may incur as a result of that claim.

14. DEFINITIONS:

14.01.(a) "Advance"--a prepayment of royalties. Company may recoup Advances from royalties to be paid or accrued to or on your behalf pursuant to this or any other agreement, except as provided in the last sentence of this subparagraph 14.01(a).

(b) "Any other agreement," in this paragraph, means any other agreement relating to you as a recording artist or as a producer of recordings of your own performances. Advances paid under Article 6 shall not be returnable to Company except as provided in Article 15 or elsewhere in this Agreement or in other circumstances in which Company is entitled to their return by reason of your failure to fulfill your obligations. Mechanical Royalties shall not be chargeable in recoupment of any Advances except those which are expressly recoupable from all monies payable under this Agreement.

(c) 50 percent of the aggregate amount, up to $_____ , of the production and acquisition costs incurred in connection with any audiovisual work embodying your performances (*i.e.*, up to $_____ per audiovisual work), under subparagraph 5.01(b), shall not be recoupable from your royalties on sales of Records other than Audiovisual Records ("audio royalties"). If any such costs are recouped from audio royalties and additional royalties accrue under paragraph 9.07 subsequently, the latter royalties shall be applied in recoupment of those costs and the amount of those audio royalties which were previously applied against those costs shall be credited back to your account.

14.02.(a) "Album"--one (1) or more audio-only Records, at least forty minutes in playing time, and embodying at least eight Sides of different Compositions sold in a single package.

(b) "Single"--a vinyl audio-only Record not more than 7 inches in diameter, or the equivalent in non-vinyl configurations but is not a Digital Side.

(c) "Twelve-inch Single"--an audio-only Record which contains not more than 3 Sides of different Compositions but is not a Digital Side.

(d) "Extended Play Record" or "EP"--an audio-only Record which contains 4 or more Sides of different Compositions but does not constitute an Album.

(e) "Audiovisual Record"--any Record which embodies, reproduces, transmits or otherwise communicates visual images whether or not the interaction of a consumer is possible or necessary for the visual images to be utilized or viewed.

14.03. "Ancillary Exploitation"--(a) the leasing of commercial advertising space to Persons other than Company, Company's distributor or their Licensees on an Artist Site or in the packaging of Phonograph Records; (b) the placement on an Artist Site of links to so-called "e-commerce" websites owned or controlled by Persons other than Company, Company's distributor or their Licensees; (c) the inclusion on Phonograph Records of web browsers, software applications, utilities or website links of Persons other than Company, Company's distributor or their Licensees; and (d) Merchandise Uses.

14.04. "Books and Records"--that portion of Company's books and records which specifically report sales of Records embodying the Masters produced hereunder and/or specifically report Net Receipts received by Company from any other commercial exploitation of such Masters for which a royalty is payable to you hereunder; provided that the term "Books and Records" shall not be deemed to include any manufacturing records (*e.g.*, inventory and/or production records) or any other of Company's records. Upon your written request in connection with any permitted audit hereunder, "Books and Records" shall also be deemed to include Company's so-called "perpetual inventory" records (as such term is currently understood in the record industry) for Phonograph Records hereunder reflecting units manufactured, units shipped, returned units, current inventory, and any adjustments thereto.

14.05. "Budget Record"--a Record, whether or not previously released, bearing a Royalty Base Price more than 33.33 percent lower than the Royalty Base Price applicable to the Top Line Records in the same configuration (*e.g.*, whether it is a tape cassette, compact disc, or vinyl Record and whether it is an Album, Single or Audiovisual Record) released by Company or Company's Licensees in the country concerned.

14.06. "Club Operation"--any direct sales to consumers through a record club (for example, sales through Columbia House in the United States or Bertelsmann Club in Europe).

14.07. "Composition"--a single musical composition, irrespective of length, including all spoken words and bridging passages and including a medley. Recordings of more than one arrangement or version of the same Composition, reproduced on the same Record, shall be considered, collectively, a recording of one Composition for all purposes under this Agreement.

14.08. "Contract Period"--the first period, or any Option Period, of the Term (as such periods may be suspended or extended as provided herein).

14.09. "Controlled Composition"--a Composition wholly or partly written, owned or controlled by you, a Producer, or any Person in which you or a Producer has a direct or indirect interest.

14.10. "Deliver" or "Delivery" or "Delivered," when used with respect to Masters--means the actual receipt by the representative of Company designated in each instance of fully mixed (in accordance with Company's then-current specifications), edited, and unequalized and

equalized Recordings (including but not limited to a final two-track equalized tape copy), satisfactory to Company for the manufacture and sale of Records, and all original and duplicate Recordings of the material recorded including each multi-track master, together with all necessary licenses, approvals, consents and permissions, and all materials required to be furnished by you to Company for use in the packaging and marketing of the Records. A Recording shall not be considered satisfactory hereunder unless: (a) it is commercially and technically satisfactory to Company for Company's manufacture and sale of Records; (b) your performance recorded in it is "first class" (as that term is understood in the record industry); (c) that performance is at least of the quality of your prior recorded performances; and (d) your performance in the Recording concerned is in the same style as your prior recorded performances and the musical material recorded in the Recording concerned is of the same genre as the musical material recorded in those prior recorded performances. An Album shall not be considered satisfactory unless the proportionate number and playing time of the Compositions in it written by you is at least substantially equivalent to the proportionate number and playing time of such Compositions in each of your previous Albums. In addition, a Record shall not be considered satisfactory if the Record includes any endorsements or so-called "commercial tie-ins" not approved by Company in writing, or if it contains any material (*e.g.*, lyrics) which Company deems patently offensive or which, in the judgment of its attorneys, might subject Company or Company's Licensees to unfavorable regulatory action, violate any law, infringe the rights of any Person, or subject Company or Company's Licensees to liability for any reason. In lieu of the physical delivery to Company's designated representative of all of the original and duplicate Masters concerned, you may provide written notice ("Notice of Control or Possession") to Company's designated representative in a form acceptable to Company which, to Company's satisfaction, enables Company at Company's discretion to control and/or to take possession of the original and duplicate Masters concerned at the recording studios or other facilities at which such Masters are maintained. Each Master Recording shall be clearly marked to identify you as the recording artist, and to show the authors, title(s) and publishers of the Composition(s) and recording date(s). You shall Deliver to Company as part of your Delivery obligations hereunder a track-by-track list ("Personnel List") of all featured vocal performers, background vocal performers and instrumental performers on each Master Recording identifying their performances. Company's payment of any monies due in respect of the Delivery of Masters hereunder, and any assistance or cooperation by Company in obtaining any necessary licenses, approvals, consents or permissions, shall not be deemed to be a waiver of your obligation to obtain and furnish clearly marked Masters as aforesaid, the Personnel List and all necessary licenses, approvals, consents and permissions and shall not be deemed to be a waiver of your Delivery obligations or representations and warranties hereunder. For purposes of calculating the Term and any other time periods tied to Delivery of Masters hereunder, only, and notwithstanding anything expressed or implied elsewhere herein, completion of Delivery shall be deemed to have occurred upon the last day of the month in which Company receives notice from you ("Notice of Delivery"), in the form attached hereto as Exhibit C, or in a similar form acceptable to Company, accurately confirming that you have Delivered all of the Masters concerned and fulfilled all of your obligations with respect thereto.

14.11. "Digital Side"--an audio-only Record consisting of a Side that is digitally transmitted, *e.g.*, a DPD.

14.12. "Gross Receipts"--means all monies (including non-returnable advances) actually earned and received by Company in the United States, directly from the applicable exploitation of the Recordings and/or Videos concerned or directly from the applicable Ancillary Exploitation concerned. (For the purposes of determining Gross Receipts, any royalties credited to Company's account but charged in recoupment of a prior advance made

to Company and retained by the payor by reason of that charge shall be deemed paid to Company and received by Company when Company receives the accounting reflecting the credit and charge concerned.) If any monies included in Gross Receipts are attributable to a Master Recording and/or a Video hereunder and to other Recordings, or partially to an Ancillary Exploitation, the amount of that item to be included in Gross Receipts hereunder shall be reasonably apportioned. If a use of a Recording and/or a Video and/or Ancillary Exploitation on which a Net Receipts Royalty is payable hereunder is made by another division or component of _____ , or by a joint venture as to which _____ is a party, Company's discretion in negotiating the amount of the compensation (if any) to be paid or credited to Company for that use and included in Gross Receipts shall be conclusive, provided that amount is fair and reasonable under the circumstances. (The preceding sentence shall apply whether or not the user derives revenues from the use, and the user's revenues shall not be deemed Gross Receipts.) Any such amount shall be deemed fair and reasonable if it is comparable to compensation then being negotiated by Company with unaffiliated users for comparable uses, or if Company notifies you that it proposes to agree to the amount concerned and you do not notify Company of your objection within five business days. If you make any such objection you shall also notify Company of your reasons therefor and shall negotiate with Company in good faith to resolve the difference underlying such objection if Company so requests. Notwithstanding the foregoing, or anything to the contrary expressed or implied elsewhere herein, with respect to receipts payable from a Club Operation, Gross Receipts shall specifically not include any profits received by Company or any Licensee as a joint venture partner. Gross Receipts shall specifically not include: (a) any payments received by Company, Company's distributor or their Licensees pursuant to any statute or other legislation (including, without limitation, payments for the public performance of Recordings, or royalties payable for the sale of blank recording media or for the sale of recording equipment) or (b) any payments received by Company, Company's distributor or their Licensees from any so-called "blanket licenses" (including, without limitation, performance licenses) or sponsorship between Company, Company's distributor and a Licensees or other Person under which the Licensee or other Person is granted access to all or a significant portion of Company's catalogue of Recordings, websites or other intellectual property.

14.13. "Inception of Recording"--the first recording of performances or other sounds with a view to the eventual fixation of a Master Recording. Masters "from the Inception of Recording" include, without limitation, all rehearsal recordings, "outtakes," and other preliminary or alternate versions of sound Recordings which are created during the production of Masters hereunder.

14.14. "Initial Release in the United States"--the last day of the month during which the "in-store" date (as that term is currently understood in the United States recording industry) for the primary configuration of the Album or other Record concerned occurs.

14.15. "Joint Recording"--any Master Recording embodying your performance together with the performance by another artist or artists with respect to whom Company is obligated to pay royalties. The amounts applicable to any Joint Recording which are payable by you or chargeable against your royalties shall be computed by apportionment as provided in paragraph 10.01.

14.16. "Licensees"--a licensee of rights from Company, including, without limitation, any wholly or partly owned subsidiaries, affiliates and other divisions and components of Company or any future distributor of Records released by Company.

14.17. "Master Recording"--as defined in paragraph 7.01 above.

14.18. "Mechanical Royalties"--royalties payable to any Person for the right to reproduce and distribute copyrighted Compositions on Records other than Audiovisual Records.

14.19. "Mid-price Record"--a Record, whether or not previously released, bearing a Royalty Base Price at least 15 percent, but not more than 33.33 percent, lower than the Royalty Base Price applicable to the Top Line Records (defined in paragraph 14.34 below) in the same configuration.

14.20. "Multiple Record Set"--two or more Records packaged and/or marketed as a single unit.

14.21. "Net Receipts"--means Gross Receipts, after deduction by Company of all direct expenses (including without limitation advertising sales commissions or fees (or an equivalent amount retained by Company if Company or its Licensees undertakes to perform the functions of an advertising agency)), taxes, and adjustments incurred in connection with the production of the Recording and/or Video concerned or the Ancillary Exploitation concerned, the acquisition of rights in them, the applicable exploitation of the Recording and/or Video and/or Ancillary Exploitation concerned, and/or in connection with the collection and receipt of those Gross Receipts in the United States (including, without limitation, all copyright payments, all re-use payments under Company's agreements with the American Federation of Musicians and any other third-party payments). For purposes of section 9.07(b)(i) above and for purposes of Ancillary Exploitations, Net Receipts shall be determined after deducting the foregoing as well as after deducting a marketing and distribution fee equal to 25 percent of the applicable Gross Receipts. If any item deducted from Gross Receipts in determining Net Receipts is attributable to a Master Recording and/or a Video hereunder and to other Recordings or partially to an Ancillary Exploitation, the amount of that item to be deducted in determining Net Receipts hereunder shall be determined by reasonable apportionment

14.22. "Net Sales"--100 percent of gross sales, less returns, credits, and reserves against anticipated returns and credits, except that solely with respect to the calculation of Mechanical Royalties under Article 12, "Net Sales" shall mean 85 percent of gross sales, less returns, credits, and reserves against anticipated returns and credits. Returns shall be apportioned between Records sold and "free goods" in the same ratio in which Company's customer's account is credited.

14.23. "Person"--any natural person, legal entity, or other organized group of persons or entities. (All pronouns, whether personal or impersonal, which refer to Persons include natural persons and other Persons.)

14.24. "Recording"--every recording of sound, whether or not coupled with a visual image, by any method and on any substance or material, or in any other form or format, whether now or hereafter known, which is used or useful in the recording, production, manufacture, distribution and/or transmission of Records or for any other commercial exploitation.

14.25. "Recording Costs"--all amounts paid or incurred in connection with the production of Masters or Records hereunder. Recording Costs include, without limitation, all union scale payments required to be made to you in connection with Masters hereunder, all costs of instrumental, vocal and other personnel specifically approved by Company for the recording of such Recordings, travel, rehearsal, and equipment rental expenses, per diems, advances to producers, studio and engineering charges in connection with Company's facilities and personnel or otherwise, all other amounts required to be paid by Company pursuant to any

applicable law or any collective bargaining agreement between Company and any union representing Persons who render services in connection with such Recordings, and all costs of mastering, remastering, and remixing. Recording Costs do not include the costs of producing metal parts, but include all studio and engineering charges or other costs incurred in preparing Masters for the production of metal parts and in preparing Masters for a final production Master. (Metal parts include lacquer, copper, and other equivalent masters.) Payments to the AFM Special Payments Fund and the Music Performance Trust Fund based upon record sales (so-called "per-record royalties") shall not be recoupable from your royalties or reimbursable by you.

14.26. "Record(s)"--all forms of reproductions, transmissions or communications of Recordings now or hereafter known, manufactured, distributed, transmitted or communicated primarily for home use, personal use, school use, jukebox use or use in means of transportation, including, without limitation, Records embodying or reproducing sound alone and Audiovisual Records. A "Phonograph Record" is a Record as embodied by the manufacturer and/or distributor in a physical, non-interactive Record configuration (*e.g.*, vinyl LP's, compact discs, videocassettes) prior to its distribution to the consumer, as opposed to the transmission or communication of a Record to the consumer prior to being embodied in a physical Record configuration, whether or not it may at some point be embodied in a physical Record configuration, by the consumer or under the consumer's direction or control.

14.27. "Royalty Base Price"--the applicable amount set forth in this paragraph 14.27 for the Record concerned less all excise, sales and similar taxes included in the price, if any:

(a) The net wholesale price received by Company (*i.e.*, net of any allowances, rebates and/or other discounts, whether expressed in the published price to dealers or otherwise) for the Record concerned in the configuration concerned from time to time during the accounting period in which the sale occurs.

(b) Notwithstanding anything to the contrary in subparagraph 14.27(a) above: (i) for any Record sold directly to consumers, by Company in the United States or Canada, or in any country outside the United States and Canada by Company's principal Licensee in the country concerned, via direct mail, through mail order operations or via any other means of transmission or communication, the Royalty Base Price shall be one-half (1/2) of the price (less actual shipping and handling costs and referral fees, if any, included in the price) paid by the consumer to Company or Company's Licensee, as applicable, for the Record concerned; provided, however, that if the Record concerned is transmitted or communicated by Company or Company's Licensees together with other Records, then the Royalty Base Price for such Record shall be determined by Company based on a reasonable apportionment of one-half (1/2) of the price (less a reasonable apportionment of actual shipping and handling costs and referral fees, if any, included in the price) paid by the consumer to Company or Company's Licensee; (ii) for any Record sold through a Club Operation outside of the United States, the Royalty Base Price shall be the same as that for the identical Records sold Through Normal Retail Channels in the country concerned; and (iii) for any Record created on a custom basis (including, without limitation, Records sold for use as premiums or in connection with the sale, advertising, or promotion of any other product or service), the Royalty Base Price shall be the actual sales price received by Company, less any shipping and handling fees included in such price.

14.28. "Side"--a Recording of a continuous performance of a particular arrangement or version of a Composition, not less than two and one-quarter (2 1/4) minutes in playing time. If any Album (or other group of Masters) Delivered to Company in fulfillment of a

Recording Commitment expressed as a number of Sides includes Masters of more than one arrangement or version of any Composition, all of those Recordings shall be deemed to constitute one Side.

14.29. "Special Packaging Costs"--costs paid or incurred by Company in creating and producing Record covers, sleeves, and other packaging elements or in developing, hosting and maintaining websites (including you Site), in excess of the following amounts: (a) $10,000 per Record for design of artwork (including expenses for reproduction rights) and for separations; (b) for Records manufactured for distribution anywhere in the Territory, packaging manufacturing costs equal to those necessary to manufacture the following packaging elements in the applicable territory: (i) for vinyl LP's, a four-color jacket and a one-color inner sleeve; (ii) for cassettes including digital compact cassettes, a six-panel inlay card with a four-color front panel and black and white other panels, and a standard color Norelco box; and (iii) for compact discs and any other configurations not described above, an eight-page (*i.e.*, eight faces) booklet with four-color front and back pages and black and white other pages, and a standard color jewel box. ("Color" in the preceding sentence means those colors for which Company is charged a standard fee.) The packaging elements referred to in sections (b)(i), (ii), and (iii) above are deemed for purposes of this paragraph 14.29 to be on standard weight paper or cardboard; and (c) $7,500 for website development, hosting and maintenance.

14.30. "Territory"--the universe.

14.31. "Through Normal Retail Channels"--refers to sales distribution by Company other than of Records or sales described in paragraphs 9.03, 9.04, 9.05, 9.07, 9.08 and 10.03 for which royalties are payable pursuant to the paragraph concerned.

14.32. "Top Line" Record--a Record bearing the same Gross Royalty Base as the majority (or plurality) of the new Record releases in the same configuration of Company's best-selling artists.

14.33. "Video"--an audiovisual work owned or controlled by Company featuring, primarily, the audio soundtrack of one (1) or more Masters hereunder.

15. REMEDIES:

15.01. If you do not fulfill any portion of your Recording Commitment within ninety days after the end of the time prescribed in Article 3, or any of your other material obligations under this Agreement for any reason, Company shall have the following options: (a) to suspend Company's obligations to make payments to you under this Agreement until you have cured the default; (b) to terminate the Term at any time, whether or not you have commenced curing the default before such termination occurs; and (c) to require you to repay to Company the amount, not then recouped, of any Advance previously paid to you by Company and not specifically attributable under Article 6 to an Album which has actually been fully Delivered, except as expressly provided in the next sentence. You shall not be required to repay any such Advance to the extent to which you furnish Company with documentation satisfactory to Company establishing that you have actually used the Advance to make payments to Persons not affiliated with you and in which neither you nor any such Person has any interest, for recording costs incurred in connection with the Album concerned before Company's demand for repayment. ("recording costs," in the preceding sentence, means items which would constitute Recording Costs if paid or incurred by Company.) Company may exercise each of those options by sending you the appropriate notice. Company shall not exercise Company's rights under subparagraph 15.01(a) or (c) if

the default concerned is attributable solely to the death or permanent disability of you. No exercise of an option under this paragraph shall limit Company's rights to recover damages by reason of your default, Company's rights to exercise any other option under this paragraph, or any of Company's other rights or remedies.

15.02. If Company refuses without cause to allow you to fulfill your Recording Commitment for any Contract Period and if, not later than sixty days after that refusal takes place, you notify Company of your desire to fulfill such Recording Commitment, then Company shall permit you to fulfill said Recording Commitment by notice to you to that effect given within sixty days of Company's receipt of your notice. Should Company fail to give such notice, you shall have the option to terminate the Term by notice given to Company within thirty days after the expiration of that latter sixty-day period; on receipt by Company of such notice the Term shall terminate and all parties shall be deemed to have fulfilled all of their obligations hereunder except those obligations which survive the end of the Term (*e.g.*, warranties, re-recording restrictions and the obligation to pay royalties), at which time Company shall pay to you, in full settlement of Company's obligations to you (other than those royalty obligations) an Advance in the amount equal to:

(a) The aggregate of the minimum Recording Funds fixed in paragraph 6.01 for each Album, then remaining unrecorded, of the Recording Commitment for the Contract Period during which such termination occurs (less any amounts previously paid or incurred by Company which may or were intended to reduce any of such Recording Funds), less:

(b) The average amount of the Recording Costs for the last two Albums recorded in fulfillment of the Recording Commitment (or, if only one Album in fulfillment of the Recording Commitment has been recorded, the amount of the Recording Costs for that Album), multiplied by the number of such unrecorded Albums referred to in clause (a). If Masters sufficient to constitute at least one full Album (*i.e.*, the first Album to be recorded under this Agreement) have not been completed, then the amount of the Advance payable to you under the preceding sentence shall be the amount equal to your minimum union scale compensation for the unfulfilled portion of the Recording Commitment for that Contract Period. If Company does not directly pay or incur Recording Costs for any Recording hereunder, then an amount equal to no less than 85 percent of the Recording Fund therefor, and of any other amount paid by Company to you with respect thereto, shall be treated as Recording Costs for the purposes of this paragraph 15.02. If you fail to give Company either notice within the period specified therefor, Company shall be under no obligation to you for failing to permit you to fulfill such Recording Commitment.

15.03. If because of any of the following events (any such event, a "Force Majeure Event"): act of God; inevitable accident; fire; lockout, strike or other labor dispute; riot or civil commotion; act of public enemy; enactment, rule, order or act of any government or governmental instrumentality (whether federal, state, local or foreign); failure of technical facilities; failure or delay of transportation facilities; illness or incapacity of any performer or producer; or other cause of a similar or different nature not reasonably within Company's control; Company is materially hampered in the recording, manufacture, distribution or sale of Records, then, without limiting Company's rights, Company shall have the option (a "Suspension Option") by giving you notice to suspend the running of the then current Contract Period as well as any of Company's obligations hereunder for the duration of any such contingency plus such additional time as is necessary so that Company shall have no less than thirty days after the cessation of such contingency in which to exercise Company's option, if any, to extend the Term for the next Option Period. Notwithstanding the preceding sentence, if Company is reasonably unable to provide you with notice that it intends to exercise the Suspension Option hereunder, such Suspension Option will be deemed to have

been exercised as of the first day of the Force Majeure Event giving rise to such option. If any suspension imposed under this paragraph by reason of an event affecting no Record manufacturer or distributor except Company continues for more than six months, you may request that Company, by notice, terminate the suspension by notice given to you within sixty days after Company's receipt of your notice. If Company does not do so, the Term shall terminate at the end of that sixty-day period (or at such earlier time as Company may designate by notice to you), and all parties shall be deemed to have fulfilled all of their obligations under this Agreement except those obligations which survive the end of the Term (such as warranties, re-recording restrictions, and the obligation to pay royalties).

16. AGREEMENTS, APPROVAL & CONSENT:

16.01. As to all matters treated herein to be determined by mutual agreement, or as to which any approval or consent is required, such agreement, approval or consent shall not be unreasonably withheld (except as otherwise expressly provided in this Agreement).

16.02. Your agreement, approval or consent, or that of you, whenever required (including, without limitation, written agreement, approval or consent), shall be deemed to have been given unless you notify Company otherwise within ten business days following the date of Company's written request to you therefor.

17. NOTICES:

Except as otherwise specifically provided herein, all notices under this Agreement shall be in writing and shall be given by courier or other personal delivery or by certified mail at the appropriate address below or at a substitute address designated by notice by the party concerned.

To You: The address shown above.

To Company:

Each notice to Company shall be addressed for the attention of Company's Chief Executive Officer. Copies of each notice sent to Company shall be simultaneously sent to the Vice President, Business & Legal Affairs. _____[*Add the following if a courtesy copy is requested for Artist's attorney:* Company shall undertake to send a copy of each notice sent to you to Alan H. Kress, Esq., 60 East 42nd Street, Suite 1638, New York, NY 10165, but Company's failure to send any such copy will not constitute a breach of this Agreement or impair the effectiveness of the notice concerned.] Notices shall be deemed given when mailed or, if personally delivered, when so delivered, except that a notice of change of address shall be effective only from the date of its receipt.

18. MISCELLANEOUS:

18.01. You shall, prior to the release of the first Album hereunder, prepare an act of professional quality and shall, during the Term, actively pursue your career as an entertainer in the live engagement field.

18.02. Company shall have the right, throughout the Term, to obtain or increase insurance on the life of you in such amounts as Company determines, in Company's name and for Company's sole benefit or otherwise, in Company's discretion. You shall cooperate in

physical examinations without expense to you, supply information, and sign documents, and otherwise cooperate fully with Company, as Company may request in connection with any such insurance. You and you warrant and represent that, to your best knowledge, you is in good health and does not suffer from any medical condition which might interfere with the timely performance of your obligations under this Agreement. You shall not be deemed in breach of this Agreement by reason of Company's inability to obtain any such insurance, unless it results from failure by you to comply with your obligations under this paragraph.

18.03. The parties hereto agree that: (a) all understandings and agreements heretofore made between them with respect to the subject matter hereof are merged in this Agreement, which fully and completely expresses their agreement with respect to the subject matter hereof and (b) except as specifically set forth herein, all prior agreements among the parties with respect to such subject matter are superseded by this Agreement which integrates all promises, agreements, conditions and understandings among the parties with respect to such subject matter. In addition, you acknowledge that neither Company nor any person acting on behalf of Company (including its agents, its representatives or its attorneys) has made any promise, representation or warranty whatsoever, express or implied, oral or written, not contained herein, and you further acknowledge that you have not executed, and have not been induced to execute, this Agreement in reliance upon any promise, representation or warranty. No change, modification, waiver or termination of this Agreement shall be binding upon Company unless it is made by an instrument signed by an authorized officer of Company. No change of this Agreement shall be binding upon you unless it is made by an instrument signed by you. A waiver by either party of any provision of this Agreement in any instance shall not be deemed a waiver of such provision, or any other provision hereof, as to any future instance or occurrence. All remedies, rights, undertakings, and obligations contained in this Agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, undertaking, or obligation of either party. The captions of the Articles in this Agreement are included for convenience only and shall not affect the interpretation of any provision.

18.04. Those provisions of any applicable collective bargaining agreement between Company and any labor organization which are required, by the terms of such agreement, to be included in this Agreement shall be deemed incorporated herein.

18.05.(a) Company may assign Company's rights under this Agreement in whole or in part to any subsidiary, affiliated or controlling corporation, to any Person owning or acquiring a substantial portion of the stock or assets of Company, or to any partnership or other venture in which Company participates, and such rights may be similarly assigned by any assignee. No such assignment shall relieve Company of any of Company's obligations hereunder. Company may also assign Company's rights to any of Company's Licensees if advisable in Company's sole discretion to implement the license granted. You shall not have the right to assign this Agreement or any of your rights hereunder without Company's prior written consent. Any purported assignment by you in violation of this paragraph shall be void.

(b) Notwithstanding anything to the contrary in paragraph 1.02 or otherwise and without limiting the generality of the foregoing, if Company does not exercise its option under section 1.02(b)(ii) prior to the last day of the Extension Period, you will promptly notify Company of the same and Company shall have the right to exercise the applicable Contract Period Option, by sending a notice to you not later than the date ten business days after the last day of the Extension Period. Each such notice shall be in writing and shall be sent by courier or other personal delivery or be or certified mail to the attention of Company's Vice

President Business& Legal Affairs.

18.06. If any part of this Agreement, or the application thereof to any party, shall be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect the remainder of this Agreement, which shall continue in full force and effect, or the application of this Agreement to the remaining parties.

18.07. Neither party shall be entitled to recover damages or to terminate the Term by reason of any breach by the other party of its material obligations, unless the latter party has failed to remedy the breach within a reasonable time following receipt of notice thereof. (The preceding sentence shall not apply to any termination by Company under subparagraph 15.01(b) or to any recovery to which Company may be entitled by reason of your failure to fulfill your Recording Commitment hereunder.) Notwithstanding the foregoing, you shall not be entitled to terminate the Term in connection with any claim that additional monies are payable to you hereunder, unless: (i) such claim is reduced to a final, non-appealable judgment by a court of competent jurisdiction and the failure to pay such monies is determined to constitute a material breach and (ii) Company fails to pay you the amount thereof within thirty days after Company receives notice of the entry of such judgment.

18.08. THIS AGREEMENT HAS BEEN ENTERED INTO IN THE STATE OF _____[*name of state*], AND THE VALIDITY, INTERPRETATION AND LEGAL EFFECT OF THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF _____[*name of state*] APPLICABLE TO CONTRACTS ENTERED INTO AND PERFORMED ENTIRELY WITHIN THE STATE OF _____[*name of state*] (WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW PRINCIPLES UNDER _____[*name of state*] LAW). THE _____[*name of state*] COURTS (STATE AND FEDERAL), SHALL HAVE SOLE JURISDICTION OF ANY CONTROVERSIES REGARDING THIS AGREEMENT; ANY ACTION OR OTHER PROCEEDING WHICH INVOLVES SUCH A CONTROVERSY SHALL BE BROUGHT IN THOSE COURTS IN _____[*name of country*] COUNTY AND NOT ELSEWHERE. THE PARTIES WAIVE ANY AND ALL OBJECTIONS TO VENUE IN THOSE COURTS AND HEREBY SUBMIT TO THE JURISDICTION OF THOSE COURTS. ANY PROCESS IN ANY SUCH ACTION OR PROCEEDING MAY, AMONG OTHER METHODS, BE SERVED UPON YOU BY DELIVERING IT OR MAILING IT, BY REGISTERED OR CERTIFIED MAIL, DIRECTED TO THE ADDRESS FIRST ABOVE WRITTEN OR SUCH OTHER ADDRESS AS YOU MAY DESIGNATE PURSUANT TO ARTICLE 17. ANY SUCH PROCESS MAY, AMONG OTHER METHODS, BE SERVED UPON THE ARTIST OR ANY OTHER PERSON WHO APPROVES, RATIFIES, OR ASSENTS TO THIS AGREEMENT TO INDUCE COMPANY TO ENTER INTO IT, BY DELIVERING THE PROCESS OR MAILING IT BY REGISTERED OR CERTIFIED MAIL, DIRECTED TO THE ADDRESS FIRST ABOVE WRITTEN OR SUCH OTHER ADDRESS AS THE ARTIST OR THE OTHER PERSON CONCERNED MAY DESIGNATE IN THE MANNER DESCRIBED IN ARTICLE 17. ANY SUCH DELIVERY OR MAIL SERVICE SHALL BE DEEMED TO HAVE THE SAME FORCE AND EFFECT AS PERSONAL SERVICE WITHIN THE STATE OF _____[*name of state*].

18.09. In entering into this Agreement, and in providing services pursuant hereto, you and you have and shall have the status of independent contractors. Nothing herein contained shall contemplate or constitute you as Company's agent or employee, and nothing herein shall constitute a partnership, joint venture or fiduciary relationship between you and Company.

18.10. This Agreement shall not become effective until executed by all proposed parties hereto.

Sincerely,

_____ Records

By: _____

Agreed and Accepted:
_____
By: _____
An Authorized Signatory

My taxpayer identification number (social security number or employer identification number) is _____ -_____ -_____ . Under the penalties of perjury, I certify that this information is true, correct, and complete.

SCHEDULE A

(Appended in accordance with paragraph 11.06 above)

Internal Revenue Service Form

[See attached]

SCHEDULE B

(Appended in accordance with subparagraph 12.03(a) above)

TO:

ATT: COPYRIGHT DEPARTMENT

A. TITLE: WRITERS:

B. PUBLISHER(S) AND PAYMENT PERCENTAGE:

C. RECORD(S) NO.:
ARTIST:

ROYALTY RATE: STATUTORY

THE AUTHORITY HEREUNDER IS LIMITED TO THE MANUFACTURE AND DISTRIBUTION OF PHONORECORDS SOLELY IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND NOT ELSEWHERE.

DATE OF RELEASE:

You have advised us [*add, if appropriate:*, in our capacity as Agent for the Publisher(s) referred to in (B) above,] that you wish to obtain a compulsory license to make and to distribute phonorecords of the copyrighted work referred to in (A) above, under the compulsory license provision of Section 115 of the Copyright Act.

Upon your doing so, you shall have all the rights which are granted to, and all the obligations which are imposed upon, users of said copyrighted work under the compulsory license provision of the Copyright Act, after phonorecords of the copyrighted work have been distributed to the public in the United States under the authority of the copyright owner by another person, except that with respect to phonorecords thereof made and distributed hereunder:

1. You shall pay royalties and account to us [as Agent for and on behalf of said Publisher(s)] quarterly, within 45 days after the end of each calendar quarter, on the basis of records made and distributed;

2. For such records made and distributed, the royalty shall be the statutory rate in effect at the time the record is made, except as otherwise stated in (C) above;

3. This compulsory license covers and is limited to one (1) particular recording of said copyrighted work as performed by the artist and on the record number identified in (C) above; and this compulsory license does not supersede nor in any way affect any prior agreements now in effect respecting phonorecords of said copyrighted work;

4. If you fail to account to us and pay royalties as herein provided for, said Publisher(s) or his Agent may give written notice to you that, unless the default is remedied within thirty days from the date of the notice, this compulsory license shall be automatically terminated. Such termination shall render either the making or the distribution, or both, of all phonorecords for which royalties have not been paid, actionable as acts of infringement under, and fully subject to the remedies provided by the Copyright Act;

5. You need not serve or file the notice of intention to obtain a compulsory license required by the Copyright Act.

SCHEDULE C

(Appended in accordance with paragraph 14.10 above)

Notice Of Delivery

Date _____

To:

Attn: Vice President, Administration

This letter will serve to confirm that on _____[*date*], I / we physically delivered to _____[*name of recipient*] at _____[*address*] all items set forth in paragraph 14.10 of my / our recording agreement with you, dated _____[*date*], with respect to the [first, second, etc.] [Album] of [my] // [our] Recording Commitment.

[*OR*]

This letter will serve to confirm that on _____[*date*], I / we have provided _____[*name of recipient*] at _____[*address*] with Notice of Control or Possession, as described in paragraph 14.10 of my // our recording agreement with you dated _____[*date*], with respect to the [first, second, etc.] [Album] of [my] // [our] Recording Commitment.

Very truly yours,
_____

EXHIBIT B

BASIC BRAND EQUITY AGREEMENT

Attached to and made part of a Exclusive Recording Agreement (Short Form) between Company and
_____ **dated as of** _____[*date*].

Basic Brand Equity Agreement made as of _____[*date*] ("Participation Agreement"), between _____ with an address at _____ ("you") and _____ ("Company").

Reference is made to the exclusive recording agreement (the "Recording Agreement") between you and Company dated as of _____[*date*] regarding your recording services, as such agreement may from time to time be amended, supplemented, or otherwise modified. Capitalized terms defined in the Recording Agreement and used herein shall have the meanings given to such terms in the Recording Agreement, unless otherwise specified herein.

1. PARTICIPATION TERM

1.01. The term of this Participation Agreement (the "Participation Term") shall begin on the date set forth above and shall continue for the term of the Recording Agreement (as may be amended and extended).

1.02. For the avoidance of doubt, Company shall not be entitled to exercise any Participation Period Option unless Company has also exercised its Contract Period Option to extend the Term of the Recording Agreement for an additional Contract Period.

2. FEES

2.01. Promptly following the complete execution of this Agreement, Company shall pay you an Advance in the amount of $_____ in connection with the first Participation Period.

2.02. Promptly following Company's exercise of each Participation Period Option (if any) hereunder, Company shall pay you an Advance of $_____ .

The fees prescribed in paragraph 2.01 and this paragraph 2.02 are collectively referred to as the "Fees."

2.03. You hereby authorize and direct Company to withhold from any Fees due you from Company any portion thereof required to be withheld by the United States Internal Revenue Service and/or any other governmental authority, and to pay same to the United States Internal Revenue Service and/or such other authority. No Fees shall be paid pursuant to this Agreement until you have completed the Internal Revenue Service Form W-4 attached hereto as Schedule A.

3. PARTICIPATION PAYMENTS

3.01.(a) In full consideration of the Fees prescribed in Article 2 above, you will pay, and you will cause any and all Third Parties (as defined in subparagraph 3.01(b) below) to pay, to Company 50 percent of any and all gross monies ("Participation Payment") (including, without limitation, royalties, advances, revenues, and fees) otherwise payable to you or any Person affiliated with you or receiving monies on behalf of you (individually and collectively, the "Artist Parties"), anywhere in the world during the Participation Term, or pursuant to any agreements, commitments, or engagements entered into or secured during the Participation Term, solely in connection with the following (collectively, the "Covered Revenues"): (i) services (other than those services included within the exclusive services granted to Company under the Recording Agreement) rendered by you as actor or performer in any and all media now known or hereafter devised, including, without limitation, film, television, live theater, and internet (whether pre-recorded or for live broadcast or transmission, whether free or pay, and whether for public performance or home use such as on home video devices); (ii) the use of your name, your likeness and/or logos on merchandise of any kind (other than records and merchandise incorporating materials owned and/or controlled by Company or its Licensees); (iii) endorsements, sponsorships and strategic partnerships; (iv) live performance engagements; (v) non-fiction books, magazines and other non-fiction publishing materials; (vi) fan clubs; (vii) games, including without limitation, video games (other than video games created by Company) and (viii) music publishing. Notwithstanding anything to the contrary in the preceding sentence, the following shall be excluded from monies that are subject to Company's participation under this paragraph: (A) actual commissions charged to any of you Parties (including without limitation, your managers, agents and advisors other than you Parties) solely in connection with any of the Covered Revenues, provided that the aggregate amount of such deductions to be applied to Covered Revenues in any instance shall not exceed 30 percent of the Covered Revenues concerned; (B) legitimate, direct, actual, third-party, out-of-pocket costs incurred by you to generate the Covered Revenues concerned (*e.g.*, lighting or buses for a tour); and (C) revenue derived from Covered Revenues described in clauses (ii) and (iv) above (collectively, "Tour and Merchandising Revenues") until the date when you have not sustained a cumulative loss on commercial live performance engagements for any period of 3 consecutive months while there is a touring activity. The foregoing shall not apply to Tour and Merchandising Revenues derived specifically from retail merchandise, which shall constitute Covered Revenues from the commencement of the Participation Term. For the avoidance of doubt, the Participation Payment shall be calculated only once with respect to revenues derived from any particular exploitation. By way of example, if in connection with a particular Covered Revenue in any instance, $100 is generated, Company's portion would be calculated only once with reference to that gross amount and

not also with reference to any portion of that gross amount payable to any third party. If you terminate the Term of the Recording Agreement pursuant to subparagraph 8.06(a) of the Recording Agreement by reason of Company's failure to release an Album of the Recording Commitment, then Company shall not be entitled to receive Participation Payments arising solely out of the agreements, commitments, or engagements entered into or secured solely in connection with the Covered Revenues, during the applicable Contract Period in which such Album is Delivered under the Recording Agreement. You will be required to furnish us with accounting statements explaining the calculation of the Participation Payments in reasonable detail. All payments, statements, or notices of any kind sent to us by you will be sent to us at the address given above, directed to the attention of our Vice President of Royalty Accounting, or to such other address of which we notify you in writing, and with a copy to the same address directed to the attention of our Executive Vice President, Business and Legal Affairs.

(b) You will irrevocably direct and will use reasonable efforts to cause each Person from which you or any Person receiving revenues on your behalf receives Covered Revenues ("Third Party"), to account directly to Company for Company's share of such Covered Revenues at the same times and subject to the same accounting terms as apply to accountings to you, you(s) concerned and/or the applicable Person receiving Covered Revenues on your behalf, but no less frequently than semi-annually. You shall use reasonable efforts to cause all agreements with Third Parties (each, a "Covered Revenue Agreement") to provide that Company shall have the right to examine each Third Party's books and records with respect to Covered Revenues subject to the same terms and limitations as apply to accountings to you, you(s) concerned and/or the applicable Person receiving Covered Revenues on your behalf. You will provide Company with a copy of each Covered Revenue Agreement within ten days after the execution of such agreement. Company shall have the right to examine your books and records (upon reasonable prior notice to you, at your and/or your offices where the records concerned are kept, provided, at Company's request you will make all such records available at one such office, and not more frequently than once per twelve-month period) and each Person receiving Covered Revenues on your or their behalf with respect to Company's share of Covered Revenues. If it is not practicable for you to obtain such direct accounting and audit rights for Company in any instance, you will notify Company upon conclusion of each Covered Revenue Agreement if you have not obtained such direct accounting and audit rights for Company, and you will render statements and payments to Company for Company's share of all Covered Revenue within ten days after the receipt of each statement under each Covered Revenue Agreement. Without limiting the foregoing, you will provide Company with a copy of each statement received by you under each Covered Revenue Agreement within ten days after receipt of such statement. Nothing in any Covered Revenue Agreement will relieve you of your obligation to make such payments to Company if not paid to Company by the applicable Third Party, within ten days after the rendering of each accounting which includes such Covered Revenues concerned, or within ten days after receipt by you or on your behalf of such Covered Revenues if for any reason not included in an accounting, in each instance, and you will be liable to Company for all such payments not made to Company as required by this paragraph 3.

(c) You shall maintain books and records which Company may examine at its own expense. Company may make those examinations only for the purposes of verifying the accuracy of any royalty statement relating to the Participation Payment and only once during each twelve-month period, only once for a particular accounting period, and only within three years after the date when you send Company such statement. Company may make those examinations only during your usual business hours, on reasonable written notice for a reasonably convenient time, and at the place where you keep the books and records to be

examined. Company may appoint a qualified royalty auditor to make any such examination on its behalf.

4. WARRANTIES; REPRESENTATIONS; RESTRICTIONS; INDEMNITIES

4.01. You warrant and represent that:

(a) You have the right and power to enter into and fully perform this Participation Agreement. You are and shall continuously be a limited liability company in good standing in the jurisdiction of your formation.

(b) You are or you will become and will remain, to the extent necessary to enable the performance of this Participation Agreement, a member in good standing of all labor unions or guilds, membership in which may be lawfully required for the performance of your services described in this Participation Agreement.

4.02. During the Participation Term, you shall not enter into any agreement which would interfere with the full and prompt performance of your obligations hereunder.

4.03.(a) You shall at all times indemnify and hold harmless Company and any Licensee of Company from and against any and all claims, losses, damages, liabilities, costs and expenses, including, without limitation, legal expenses and reasonable counsel fees, arising out of any breach or alleged breach by you of any warranty or representation made by you in this Participation Agreement or any other act or omission by you, provided the claim concerned has been settled or has resulted in a judgment against Company or Company's Licensees. Company shall notify you of any action commenced on such a claim. You may participate in the defense of any such claim through counsel of your selection at your own expense, but Company shall have the right at all times, in Company's sole discretion, to retain or resume control of the conduct of the defense. If any claim involving such subject matter has not been resolved, or has been resolved by a judgment or other disposition which is not adverse to Company or Company's Licensees, you shall reimburse Company for 50 percent of the expenses actually incurred by Company and Company's Licensees in connection with that claim. Pending the resolution of any such claim, Company may withhold monies which would otherwise be payable to you under this Participation Agreement in an amount consistent with such claim. If no action or other proceeding for recovery on such a claim has been commenced within twelve months after its assertion Company shall not continue to withhold monies in connection with that particular claim under this subparagraph 4.03(a) unless Company believes, in Company's reasonable judgment, that such a proceeding may be instituted notwithstanding the passage of that time.

(b) If Company pays more than $7,500.00 in settlement of any such claim, you shall not be obligated to reimburse Company for the excess unless you have consented to the settlement, except as provided in the next sentence. If you do not consent to any settlement proposed by Company for an amount exceeding $7,500.00 you shall nevertheless be required to reimburse Company for the full amount paid unless you make bonding arrangements, satisfactory to Company in Company's reasonable discretion, to assure Company of reimbursement for all damages, liabilities, costs and expenses (including, without limitation, legal expenses and reasonable counsel fees) which Company or Company's Licensees may incur as a result of that claim.

5. REMEDIES. If you do not fulfill any of your material obligations under this Participation Agreement, Company shall have the option to suspend Company's obligations to make

payments to you under this Participation Agreement until you have cured the default. Company may exercise this option by sending you the appropriate notice. Company shall not exercise Company's rights under this paragraph 5 if the default concerned is attributable solely to the death or permanent disability of you. No exercise of the option under this paragraph shall limit Company's rights to recover damages by reason of your default, Company's rights to exercise any other option under this paragraph, or any of Company's other rights or remedies.

6. MISCELLANEOUS

6.01. The parties hereto agree that: (a) all understandings and agreements heretofore made between them with respect to the subject matter hereof are merged in this Participation Agreement, which fully and completely expresses their agreement with respect to the subject matter hereof and (b) except as specifically set forth herein, all prior agreements among the parties with respect to such subject matter are superseded by this Participation Agreement which integrates all promises, agreements, conditions and understandings among the parties with respect to such subject matter. In addition, you acknowledge that neither Company nor any person acting on behalf of Company (including its agents, its representatives or its attorneys) has made any promise, representation or warranty whatsoever, express or implied, oral or written, not contained herein, and you further acknowledge that you have not executed, and have not been induced to execute, this Participation Agreement in reliance upon any promise, representation or warranty. No change, modification, waiver or termination of this Participation Agreement shall be binding upon Company unless it is made by an instrument signed by an authorized officer of Company. No change of this Participation Agreement shall be binding upon you unless it is made by an instrument signed by you. A waiver by either party of any provision of this Participation Agreement in any instance shall not be deemed a waiver of such provision, or any other provision hereof, as to any future instance or occurrence. All remedies, rights, undertakings, and obligations contained in this Participation Agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, undertaking, or obligation of either party. The captions of the Articles in this Participation Agreement are included for convenience only and shall not affect the interpretation of any provision.

6.02.(a) Company may assign Company's rights under this Participation Agreement in whole or in part to any subsidiary, affiliated or controlling corporation, to any Person owning or acquiring a substantial portion of the stock or assets of Company, or to any partnership or other venture in which Company participates, and such rights may be similarly assigned by any assignee. No such assignment shall relieve Company of any of Company's obligations hereunder. Company may also assign Company's rights to any of Company's Licensees if advisable in Company's sole discretion to implement the license granted. You shall not have the right to assign this Participation Agreement or any of your rights hereunder without Company's prior written consent. Any purported assignment by you in violation of this paragraph shall be void.

(b) Without limiting the generality of the foregoing, you acknowledge that this Agreement is subject to assignment to _____ ("_____ "), in accordance with an agreement between Company and _____ , and _____ shall have the right to exercise, implement or enforce any rights granted to Company hereunder on Company's behalf. In the event of a default by Company in performing any of its obligations under this Agreement, duplicate notice of such default will be sent to _____ , Attention: General Counsel, simultaneously with the giving of such notice to Company and _____ shall have the right to cure each default on behalf of Company.

6.03. If any part of this Participation Agreement, or the application thereof to any party, shall be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect the remainder of this Participation Agreement, which shall continue in full force and effect, or the application of this Participation Agreement to the remaining parties.

6.04. Neither party shall be entitled to recover damages or to terminate the Participation Term by reason of any breach by the other party of its material obligations, unless the latter party has failed to remedy the breach within a reasonable time following receipt of notice thereof. Notwithstanding the foregoing, you shall not be entitled to terminate the Participation Term in connection with any claim that additional monies are payable to you hereunder, unless: (i) such claim is reduced to a final, non-appealable judgment by a court of competent jurisdiction and the failure to pay such monies is determined to constitute a material breach and (ii) Company fails to pay you the amount thereof within thirty days after Company receives notice of the entry of such judgment.

6.05. THIS PARTICIPATION AGREEMENT HAS BEEN ENTERED INTO IN THE STATE OF _____[*name of state*], AND THE VALIDITY, INTERPRETATION AND LEGAL EFFECT OF THIS PARTICIPATION AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF _____[*name of state*] APPLICABLE TO CONTRACTS ENTERED INTO AND PERFORMED ENTIRELY WITHIN THE STATE OF _____[*name of state*] (WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW PRINCIPLES UNDER _____[*name of state*] LAW). THE NEW YORK COURTS (STATE AND FEDERAL), SHALL HAVE SOLE JURISDICTION OF ANY CONTROVERSIES REGARDING THIS PARTICIPATION AGREEMENT; ANY ACTION OR OTHER PROCEEDING WHICH INVOLVES SUCH A CONTROVERSY SHALL BE BROUGHT IN THOSE COURTS IN _____[*name of county*] COUNTY AND NOT ELSEWHERE. THE PARTIES WAIVE ANY AND ALL OBJECTIONS TO VENUE IN THOSE COURTS AND HEREBY SUBMIT TO THE JURISDICTION OF THOSE COURTS. ANY PROCESS IN ANY SUCH ACTION OR PROCEEDING MAY, AMONG OTHER METHODS, BE SERVED UPON YOU BY DELIVERING IT OR MAILING IT, BY REGISTERED OR CERTIFIED MAIL, DIRECTED TO THE ADDRESS FIRST ABOVE WRITTEN OR SUCH OTHER ADDRESS AS YOU MAY DESIGNATE PURSUANT TO ARTICLE 17 OF THE RECORDING AGREEMENT. ANY SUCH PROCESS MAY, AMONG OTHER METHODS, BE SERVED UPON THE ARTIST OR ANY OTHER PERSON WHO APPROVES, RATIFIES, OR ASSENTS TO THIS PARTICIPATION AGREEMENT TO INDUCE COMPANY TO ENTER INTO IT, BY DELIVERING THE PROCESS OR MAILING IT BY REGISTERED OR CERTIFIED MAIL, DIRECTED TO THE ADDRESS FIRST ABOVE WRITTEN OR SUCH OTHER ADDRESS AS THE ARTIST OR THE OTHER PERSON CONCERNED MAY DESIGNATE IN THE MANNER DESCRIBED IN ARTICLE 17 OF THE RECORDING AGREEMENT. ANY SUCH DELIVERY OR MAIL SERVICE SHALL BE DEEMED TO HAVE THE SAME FORCE AND EFFECT AS PERSONAL SERVICE WITHIN THE STATE OF _____[*name of state*].

6.06. In entering into this Participation Agreement, and in providing services pursuant hereto, you have and shall have the status of independent contractors. Nothing herein contained shall contemplate or constitute you as Company's agents or employees, and nothing herein shall constitute a partnership, joint venture or fiduciary relationship between you and Company.

6.07. This Participation Agreement shall not become effective until executed by all proposed parties hereto.

RECORD COMPANY
By: _____

By: _____

My social security number is _____ -_____ -_____ . Under the penalties of perjury, I certify that this information is true, correct, and complete.

By: _____

SCHEDULE A

(Appended in accordance with paragraph 2.03 above) Internal Revenue Service Form W-4

[*Attach IRS Form W-4*]

EXHIBIT C

CO-PUBLISHING AGREEMENT

Attached to and made part of a Exclusive Recording Agreement (Short Form) between Company and
_____ **dated as of** _____[*date*].

Co-Publishing Agreement made as of _____[*date*] ("Co-Publishing Agreement"), between _____ with an address at _____ ("you"), and _____ with an address at _____ ("Company").

1. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, you hereby irrevocably and absolutely assigns, conveys and transfers to Company's publishing designee (the "Publisher") an undivided 50 percent interest in the worldwide copyright (and all renewals and extensions thereof) and all other rights in and to each musical composition which is (a) written or composed, in whole or in part, directly or indirectly, by you, and/or (b) is owned or controlled, in whole or in part, directly or indirectly by you, or by any person or entity in which you have a direct or indirect interest (each, a "Published Composition"), prior to or during the term hereof. Publisher shall be the exclusive administrator of all rights in and to each Published Composition, and shall be entitled to exercise any and all rights with respect to the control, exploitation and administration of each Published Composition.

2. Publisher shall pay to you the following royalties as the so-called writer's share of income:

a. Ten cents for each copy of sheet music in standard piano/vocal notation and each dance orchestration printed, published and sold in the United States by Publisher or its licensees, for which payment is received by Publisher in the United States, after deduction of returns;

b. Fifty percent of Receipts with respect to all other income.

c. Writer shall receive Writer's public performance royalties throughout the world directly from Writer's performing rights society and shall have no claim whatsoever against Publisher for any share of public performance royalties received by Publisher.

3. Publisher shall pay to your publishing designee fifty percent of Net Income. "Net Income" shall mean Receipts less the following:

a. Royalties which shall be paid by Publisher to Writer hereunder;

b. Direct, out-of-pocket, administrative and exploitation expenses of Publisher with respect to the Compositions including, without limitation, registration fees, advertising and promotion expenses directly related to the Published Compositions, the costs of transcribing for lead sheets, and the costs of producing demonstration records; and

c. Reasonable attorneys' fees, if any, actually paid by Publisher to outside counsel for any agreements affecting solely the Published Compositions or any of them.

d. Publisher's administration fee equal to 10 percent of the Receipts.

Please signify that the foregoing correctly sets forth your understanding and agreement with us by signing in the appropriate place below.

Music Publishing
By: _____

ACCEPTED AND AGREED TO:
By: _____

SCHEDULE A

ASSIGNMENT OF COPYRIGHTS

The undersigned ("Assignor"), for good and valuable consideration, receipt of which is hereby acknowledged, hereby sells, conveys and assigns to MUSIC PUBLISHING, its successors and assigns, an undivided fifty percent (50%) interest in the entire right, title and interest throughout the world and universe which is derived from Assignor, in and to the musical composition(s) listed on the attached Schedule A, including, without limitation, the copyrights and any other rights relating to the musical compositions, now known or which may hereafter be recognized or come into existence, and any and all renewals and extensions of such copyrights and other rights under applicable laws, treaties, regulations and directives now or hereafter enacted or in effect.

IN WITNESS WHEREOF, Assignor has executed this instrument on this _____ day of _____[*month and year*].

_____

ACKNOWLEDGEMENTS

STATE OF _____ ss:
COUNTY OF _____

On _____ , before me personally came, known to me to be the individual described in and who executed the foregoing instrument, and he/she acknowledged to me that he/she executed it.

_____
Notary Public

SCHEDULE B

EXISTING COMPOSITIONS

Title	Songwriter(s) and Share(s)	Publisher(s) and Share(s)	Copyright Reg. No.

Large Label 360 Agreement (Short Form Incorporating Detailed Exhibits)

EXCLUSIVE RECORDING AGREEMENT (SHORT FORM)

As of _____[*date*]

Dear _____ :

Reference is made to: (a) the standard form Exclusive Long-term Recording Agreement of _____ ("Company") attached hereto as Exhibit A (the "Basic Agreement"); (b) the standard form brand equity agreement of Company attached hereto as Exhibit B (the "Basic Brand Equity Agreement"); and (c) the co-publishing agreement attached hereto as Exhibit C (the "Co-Publishing Agreement"). The Basic Agreement, the Basic Brand Equity Agreement and the Co-Publishing Agreement, as modified and as supplemented by the provisions described below, shall constitute the agreement between you and Company regarding your services as an exclusive recording artist (subject to the immediately subsequent sentence). If Company exercises the Development Period Option (as defined below), you and Company agree to expeditiously prepare and execute a more formal agreement (the "Supplemental Agreement") containing the provisions set forth in this Agreement, as well as such other provisions as are customary in agreements of such type, and to negotiate in good faith with respect to the provisions of the Basic Agreement, the Basic Brand Equity Agreement and the Co-Publishing Agreement (other than those provisions set forth below which are non-negotiable and agreed) to be included therein. In the event of any conflict between the Basic Agreement and/or the Basic Brand Equity Agreement and/or the Co-Publishing Agreement and the provisions set forth below, the provisions set forth below shall control.

The Supplemental Agreement will include all of the provisions of the Basic Agreement, the Basic Brand Equity Agreement and the Co-Publishing Agreement which have been incorporated herein by reference or which are specifically referred to herein, and shall otherwise be in the form of the Basic Agreement, the Basic Brand Equity Agreement and the Co-Publishing Agreement, except in such respects as provided for below or as you and Company shall otherwise agree. You and Company hereby further agree that any unintentional delay or failure on the part of either party to complete the Supplemental Agreement for any reason shall not in any manner impede or compromise the enforceability and effectiveness of this Agreement. Unless specifically provided to the contrary below, all terms defined in the Basic Agreement and/or the Basic Brand Equity Agreement and/or the Co-Publishing Agreement will have the same meanings when used below.

1. TERRITORY: The Universe.

2. TERM:

(a) The term of this Agreement (the "Initial Term") shall begin on the date set forth above and shall terminate sixty days following the expiration of the Development Period (as defined below). The "Development Period" shall begin on the date set forth above and shall continue until the later of (i) ninety days thereafter, and (ii) the date of the delivery of the Development Sides (as defined in subparagraph 3(a) below). At any time prior to the expiration of the Initial Term, Company shall have the option (the "Development Period Option") to give notice to you of Company's intention to complete the Supplemental

Agreement, the Basic Agreement, the Basic Brand Equity Agreement and the Co-Publishing Agreement. If Company exercises the Development Period Option, the first Contract Period under the Basic Agreement shall be deemed to have begun on the date set forth above and shall continue in accordance with paragraph 1.01 of the Basic Agreement and the first Participation Term of the Basic Brand Equity Agreement shall be deemed to have begun on the date set forth above and shall continue in accordance with paragraph 1.01 of the Basic Brand Equity Agreement. If Company does not exercise the Development Period Option, the term of this Agreement shall expire at the end of the Initial Term and you shall not have any further obligation or liability to Company.

(b) If Company exercises the Development Period Option, you hereby grant Company six separate options to extend the Term for additional Contract Periods as set forth in the Basic Agreement.

3. RECORDING COMMITMENT:

(a) During the Development Period, you shall perform for the production of finished Recordings (mixed or unmixed) sufficient to constitute four Sides (as determined by Company in its reasonable discretion) (the "Development Sides"). You or the producer will deliver the Development Sides to Company prior to the expiration of the Development Period. The Development Sides shall, under any circumstance, be treated as Masters made under this Agreement for all purposes. Company will pay all of the recording costs (the "Recording Costs") incurred in connection with the recording of the Development Sides, including all travel and lodging expenses for you in _____[*name of recording city*] for up to thirty days, in accordance with a mutually agreed-upon budget not to exceed $_____ .

(b) During the first Contract Period (if Company exercises the Development Period Option), and each Contract Period thereafter (if Company exercises each Contract Period Option), you shall perform for the recording of Recordings sufficient to constitute one Album, cause those Recordings to be produced, and Deliver those Recordings to Company in accordance with Article 3 of the Basic Agreement.

(c) You and Company hereby mutually approve _____ as producer of all Recordings hereunder.

4. ADVANCES/FUNDS/PAYMENTS: Company shall pay you an Advance in the amount of $_____ as follows:

(a) $_____ , payable promptly following the complete execution of this Agreement by you and Company; and $_____ , payable promptly following your or the producer's Delivery of the Development Sides to Company. In addition, Company shall pay all Recording Costs incurred in connection with the Development Sides, provided, however, that Company shall not be required to pay more than $_____ of such Recording Costs. For the avoidance of doubt, such Recording Costs shall constitute Advances hereunder.

(b) Promptly after your or the producer's Delivery to Company of the Recordings constituting the first Album in satisfaction of the Recording Commitment, Company shall pay you an Advance in the amount of $_____ . The Advances for the following Albums shall be based on a 2/3rds formula of royalties earned by you on sales of the immediately preceding album, with the following minimums and maximums:

	Min	Max

Album 2:	$_____	$_____
Album 3:	$_____	$_____
Album 4:	$_____	$_____
Album 5:	$_____	$_____
Album 6:	$_____	$_____
Album 7:	$_____	$_____

(c) Each Album of your Recording Commitment shall be recorded pursuant to a budget approved by Company in accordance with subparagraph 4.01(a) of the Basic Agreement, without giving effect to the last sentence of such subparagraph 4.01(a).

5. ROYALTIES:

(a) The Basic U.S. Rate (which, for the avoidance of doubt, shall be calculated on a so-called "PPD" basis (*i.e.*, without so-called "automatic free goods," "container charges," or similar deductions) as provided in subparagraph 9.01(a) of the Basic Agreement shall be as follows:

TYPE OF RECORD	BASIC U.S. RATES	
(i)	Albums/Digital Sides in the first and second Contract Periods	_____ %
(ii)	Albums/Digital Sides in the third and fourth Contract Periods	_____ %
(iii)	Albums/Digital Sides in the fifth, sixth and seventh Contract Periods	_____ %
(iv)	Singles and EPs	_____ %

Notwithstanding subparagraph 9.01(b) of the Basic Agreement, the royalty rate (the "Escalated U.S. Rate") in respect of USNRC Net Sales of each Album recorded pursuant to your Recording Commitment in excess of the following number of units, shall be escalated by the applicable rate set forth below:

(A) _____ % escalation on unit sales exceeding 500,000; and

(B) an additional _____ % escalation on unit sales exceeding 1,000,000

6. PARTICIPATION PAYMENTS:

(a) Promptly following the exercise by Company of the Development Period Option and the full execution of the Brand Equity Agreement along with all other Supplemental Agreements, Company shall pay you a fee in the amount of $_____ in connection with the Basic Brand Equity Agreement. All references to the "Fees" in the Basic Brand Equity Agreement shall be understood to mean the fee prescribed in this subparagraph 6(a).

(b) The percentage of Covered Revenues payable pursuant to subparagraph 3.01(a) of the Basic Brand Equity Agreement shall be 50 percent. Notwithstanding anything to the contrary contained herein or in the Basic Brand Equity Agreement, the percentage of Covered

Revenues payable in connection with music publishing and songwriting shall be 25 percent.

7. RIGHTS IN RECORDINGS:

Company shall own all rights in the recordings and the Development Sides in perpetuity as set forth in Article 7 of the Basic Agreement. Company agrees to negotiate in good faith with you with respect to the commercial exploitation of the Development Sides by you or your designee if Company does not exercise the Development Period Option.

8. CO-PUBLISHING AGREEMENT:

Company's music publishing designee ("Publisher") shall pay to you, under the Co-Publishing Agreement, 50 percent of the so-called "publisher's share" of public performance income; 75 percent of mechanical royalties; 70 percent of revenues from "cover" recordings secured by Publisher; 75 percent of synchronization fees and 75 percent of all other income derived from exploitations of the Published Compositions (as defined in the Co-Publishing Agreement), including, without deduction of any administration fee from any income derived from any exploitation of the Published Compositions. All income derived from foreign sources shall be calculated on a so-called "at source" basis (as such term is generally understood in the music publishing industry) as received from performing and mechanical rights societies and other licensees, and not reduced by deductions by Publisher's affiliates, subpublishers or licensees.

9. Company and you agree and acknowledge that paragraph 18.05 of the Basic Agreement is deemed agreed to and not subject to any further negotiation.

Very truly yours,
"Company"
By: _____
Title _____

ACCEPTED AND AGREED TO:
_____
_____
Social Security Number

EXHIBIT A

EXCLUSIVE LONG-TERM RECORDING AGREEMENT

Attached to and made part of a Exclusive Recording Agreement (Short Form) between Company and
_____ , dated as of _____[*date*].

Exclusive Recording Artist Agreement made as of _____[*date*], between _____ ("Company") and _____ ("You").

1. TERM:

1.01. The term of this Agreement (hereinafter, the "Term") shall begin on the date set forth above and shall continue for a first Contract Period ending on the date seven months following the Initial Release in the United States of the Album Delivered in complete satisfaction of the Recording Commitment for such first Contract Period, but in no event later than the date twelve months following Company's receipt of Notice of Delivery of all Recordings constituting the Recording Commitment for such first Contract Period.

1.02.(a) You grant Company six separate options (each a "Contract Period Option") to extend the Term for additional Contract Periods (sometimes, hereinafter, referred to as "Option Periods") on the same terms and conditions applicable to the first Contract Period except as otherwise expressly provided in this Agreement. Company may exercise each of those Contract Period Options by sending you a notice not later than the expiration date of the Contract Period which is then in effect (the "current Contract Period"). If Company exercises a Contract Period Option, the Option Period concerned shall begin immediately after the end of the current Contract Period and shall continue until the date seven months following the Initial Release in the United States of the Album Delivered in complete satisfaction of the Recording Commitment for that Option Period but in no event later than the date twelve months following Company's receipt of Notice of Delivery of all Recordings constituting the Recording Commitment for that Option Period.

(b) Notwithstanding anything to the contrary contained in this paragraph 1.02, if Company has not exercised its option to extend the Term for a further Contract Period as of the date on which the current Contract Period would otherwise expire, the following shall apply:

(i) You shall send Company notice (an "Option Warning") that its option has not yet been exercised.

(ii) Company shall have the right to exercise the applicable Contract Period Option by sending a notice to you not later than the date ten business days after its receipt of the Option Warning (the "Extension Period").

(iii) The current Contract Period shall end on either the last day of the Extension Period or the date of Company's notice to you (the "Termination Notice") that Company does not wish to exercise such option, whichever is sooner.

(iv) For the avoidance of doubt, nothing herein shall limit Company's right to send a Termination Notice to you at any time, nor limit Company's right to exercise a Contract Period Option in accordance with subparagraph 1.02(a) above, notwithstanding any failure by you to send Company an Option Warning in accordance with section 1.02(b)(i) above.

2. SERVICES:

2.01. During the Term you shall render your services as a performing artist for the purpose of making Recordings for Company, you shall cause those Recordings to be produced, and you shall Deliver those Recordings to Company, as provided in this Agreement. (You are sometimes called "you" below; all references in this Agreement to "you and you," and the like, shall be understood to refer to you alone.)

2.02.(a) Your obligations hereunder shall include furnishing the services of the producers of those Recordings, and you shall be solely responsible for engaging and paying them. (Producers whom you engage are sometimes referred to in this Agreement by the term

"Producers.")

(b) (This subparagraph 2.02(b) shall not apply unless you have consented to the engagement of the producer concerned, or the assignment of the staff or contract producer concerned, to the recording project.) If Company, instead, engages producers other than _____ , for any of those Recordings, or if the producers, other than _____ , of any such Recordings are employees of Company or, render their services under contract to Company, the following terms shall apply:

(i) Your royalty account and the production budget for the recording project concerned shall be charged with a Recording Cost item of $_____ per Album (or $_____ per Recording for a project for the recording of less than an Album). If Company is obligated to pay those producers a higher fixed amount attributable to that project, the charge under this section 2.02(b)(1) shall be that amount instead.

(ii) Your royalty under Article 9 on Records made from those Recordings shall be reduced by the amount of a royalty of _____ percent on Albums under paragraph 9.01, adjusted in proportion to the other royalty rates and royalty adjustments provided for in the other provisions of Articles 9 and 10. (If a higher royalty is payable to the producers, the reduction under this section 2.02(b)(ii) shall be the amount of that royalty instead.) You hereby direct Company to deduct, from any and all monies payable or becoming payable to you, the royalties that Company is obligated to pay such producers in respect of Records derived from Recordings produced by such producers.

3. RECORDING COMMITMENT:

3.01.(a) During each Contract Period you shall perform for the recording of Recordings sufficient to constitute the applicable number of Albums listed below, cause those Recordings to be produced, and Deliver those Recordings to Company (the "Recording Commitment").

Contract Period	Recording Commitment
1st	One Album
2nd	One Album
3rd	One Album
4th	One Album
5th	One Album
6th	One Album
7th	One Album

(b) In addition to the Albums and materials constituting the Recording Commitment that are set forth in subparagraph 3.01(a), you hereby grant Company one option (the "Greatest Hits Option") to increase the Recording Commitment by that number of Recordings sufficient to constitute three new Sides (the "New Greatest Hits Sides"), which, as provided in paragraph 6.03 below, Company may embody in, and release as, one "Greatest Hits" or "Best of" Album, consisting of: (i) Masters made under this Agreement and previously released in different Record combinations; and (ii) the New Greatest Hits Sides (the "Qualifying Greatest Hits Album"). Upon Company's exercise of the foregoing option, your Recording Commitment for the then-current Contract Period shall be deemed to include your Delivery of the New Greatest Hits Sides. The New Greatest Hits Sides shall be recorded in accordance with paragraph 4.01(a) below.

3.02. You shall fulfill the Recording Commitment for each Contract Period within the first 5 months after the commencement of such Contract Period.

3.03. Each Album (or other group of Recordings) Delivered to Company in fulfillment of your Recording Commitment shall consist entirely of Recordings made in the course of the same Album (or other) recording project, unless Company consents otherwise. Company may withhold that consent in Company's unrestricted discretion.

4. RECORDING PROCEDURE:

4.01.(a) Prior to the commencement of recording in each instance you and Company shall mutually agree on each of the following, in order, before you proceed further: (i) selection of Producer; (ii) selection of material, including, without limitation, the number of Compositions to be recorded. (Company shall not be deemed unreasonable in rejecting any request to record an Album which would constitute a Multiple Record Set); and (iii) selection of dates of recording and studios where recording is to take place, including the cost of recording at such studios. (Company shall only disapprove the use of a particular studio if it is not a first-class recording studio, if its use would be inconsistent with any of Company's union agreements, if Company anticipates that its use would cause labor difficulties for other reasons, or if Company anticipates that its use would require expenditures inconsistent with the approved recording budget.) The scheduling and booking of all studio time shall be done by Company in accordance with your reasonable requests. In addition, at least 14 days prior to the date of the first recording session for the recording of any Recordings, you shall submit to Company in writing, for Company's written approval, a proposed budget setting forth, in itemized detail, all anticipated Recording Costs. A budget not exceeding the applicable Recording Fund fixed in paragraph 6.01 below, less any payments to you or on your behalf which are intended to reduce such Recording Fund, shall not be disapproved by Company by reason of the budget's overall amount, but each of the items constituting the budget shall be subject to Company's prior written approval.

(b) You shall notify the appropriate Local of the American Federation of Musicians in advance of each recording session.

(c) As and when reasonably required by Company, you shall allow Company's representatives to attend any and all recording sessions hereunder at Company's expense. (Those expenses shall not be recoupable.)

(d) You shall timely supply Company with all of the information Company needs in order: (i) to make payments due or required in connection with Recordings hereunder; (ii) to comply with any and all other obligations Company may have in connection with the making of Recordings hereunder; and (ii) to release Records derived from such Recordings. You shall be solely responsible for and shall pay any penalties incurred for late payment caused by your delay in submitting union contract forms, report forms or invoices, or other documents.

(e) Your submission of Recordings to Company shall constitute your representation that you have obtained all necessary licenses, approvals, consents and permissions.

4.02.(a) No Composition previously recorded by you shall be recorded under this Agreement. No "live" Recording, Joint Recording, or Recording not made in full compliance with this Agreement shall apply in fulfillment of your Recording Commitment, and Company shall not be required to make any payments in connection with any such Recording except

any royalties which may become due under this Agreement if the Recording is released or otherwise exploited by Company.

(b) No Recordings shall be made by or include unauthorized Sampling. ("Sampling," as used herein, refers to the use and reproduction of pre-existing material, hereinafter "Sampled Material," which is owned or controlled by any Person other than you or would not otherwise be subject to Company's rights under Article 7 below, in a Recording hereunder.) Concurrently with your delivery to Company of a Recording, you shall notify Company in writing of the names and addresses of all recording artists, record companies, songwriters and publishers and/or any other Persons who have any right, title or interest of any kind in any Sampled Material embodied in that Recording. You shall be solely responsible for obtaining all consents and licenses necessary or desirable in connection with the use and reproduction, and in connection with the licensing of the use and reproduction, of any Sampled Material in any Recording hereunder, so that Company shall enjoy the full and perpetual rights otherwise granted to Company pursuant to Article 7 hereunder with respect to Recordings hereunder; at Company's request, you shall supply Company with fully executed copies of any such consents, licenses and other related documentation. You shall be solely responsible for and shall account for and pay to any and all Persons who own or control Sampled Material any monies or other compensation to which such Persons are entitled as a result of any use hereunder by Company of any Recording embodying such Sampled Material. Notwithstanding anything to the contrary expressed or implied herein, no royalties, Advances or other monies shall be earned by or be payable to you hereunder or otherwise in connection with any Record embodying any Sampled Material, and no Recording embodying Sampled Material shall be deemed Delivered hereunder unless and until you have obtained, on Company's behalf, all rights required hereunder with respect to such Sampled Material, and, if Company requests, until Company receives documentation satisfactory to Company with respect thereto.

4.03. Nothing in this Agreement shall obligate Company to continue or permit the continuation of any recording session or project, even if previously approved hereunder, if Company reasonably anticipates that the Recording Costs plus all other Advances attributable to the recording session or project concerned shall exceed 110 percent of those specified in the approved budget therefor, or that the Recordings being produced shall not be commercially satisfactory to Company for the manufacture and sale of Records.

5. RECOUPABLE AND REIMBURSABLE COSTS:

5.01.(a) Company shall pay all Recording Costs incurred in connection with the production of Recordings under this Agreement consistent with the approved budget therefor. All Recording Costs paid or incurred by Company shall constitute Advances.

(b) All costs paid or incurred by Company in connection with the production of, and/or the acquisition of rights in, audiovisual works embodying your performances shall constitute Advances subject to subparagraph 14.01(b) below.

(c) All direct expenses paid or incurred by Company in connection with independent promotion or marketing of Recordings of your performances (*i.e.*, promotion or marketing by Persons other than regular employees of Company) shall constitute Advances.

(d) All costs paid or incurred by Company with respect to any trademark search, or registration in connection with any name or sobriquet now or hereafter used or proposed to be used by you under this Agreement, shall constitute Advances.

(e) All monies paid by Company to you during the Term, other than royalties paid pursuant to Articles 9 and 12, shall constitute Advances unless otherwise expressly agreed in writing by an authorized officer of Company. Each payment (except such royalties) made by Company during the Term to another Person on behalf of you shall also constitute an Advance if it is made with your consent, if it is required by law, or if it is made by Company to satisfy an obligation incurred by you in connection with the subject matter of this Agreement.

5.02. Notwithstanding anything to the contrary contained herein, any costs or expenditures which are payable by you or chargeable against your royalties which are applicable to any Joint Recordings shall be computed by apportionment as provided in paragraph 10.01.

6. ADDITIONAL ADVANCES:

6.01.(a) Promptly after your Delivery to Company of the Recordings constituting an Album in satisfaction of the Recording Commitment, Company shall pay you an Advance in the amount by which $_____ (the "Recording Fund") exceeds the Recording Costs for the Album.

(i) The amount of the Recording Fund for the first Album Delivered pursuant to your Recording Commitment for the first Contract Period shall be $_____ .

(ii) The amount of the Recording Fund for each Album of your Recording Commitment other than the first Album Delivered pursuant to your Recording Commitment for the first Contract Period shall be two-thirds (2/3) of whichever of the following amounts is less (subject to section 6.01 (a)(iii) below):

(A) the amount of the royalties (other than Mechanical Royalties) credited to your account on Net Sales Through Normal Retail Channels in the United States of the Album, made under this Agreement, released most recently before the Delivery of the Album concerned, as determined by Company from its most recent monthly trial balance accounting statement before the date on which the Album concerned is Delivered or required to be Delivered under Article 3 (whichever date is earlier) after deduction of reserves for returns and credits not exceeding 20 percent of the aggregate number of units of that Album shipped to Company's customers; or

(B) the average of the amounts of such royalties on the two such Albums released most recently before the Delivery of the Album concerned.

(iii) No Recording Fund shall be less than the applicable minimum amount or more than the applicable maximum amount set forth below:

	Minimum	Maximum
(A) Album recorded during the second Contract Period:	$_____	$_____
(B) Albums recorded during the third or fourth Contract Periods:	$_____	$_____
(C) Albums recorded during the fifth or sixth Contract Periods:	$_____	$_____
(D) Albums recorded during the seventh or eighth Contract Periods:	$_____	$_____

(b) Each Advance provided for in subparagraph 6.01(a) above, shall be reduced by the amount of any anticipated costs of mastering or remixing, and the estimated amount of any Recording Costs incurred but not yet billed to Company; any such anticipated or estimated amounts which are deducted but not incurred shall be remitted to you. If any Album other than the first Album recorded during the first Contract Period is not Delivered within the time prescribed in Article 3, the Recording Fund for that Album shall be $_____ .

6.02.(a) The aggregate amount of the compensation paid to you under this Agreement shall not be less than the Designated Dollar Amount (as defined below) per Fiscal Year. "Fiscal Year," in this paragraph, means the annual period beginning on the date of commencement of the Term, and each subsequent annual period through the seventh such annual period, during the Term.

(b) If you have not received compensation equal to the Designated Dollar Amount under this Agreement for a Fiscal Year, Company shall pay you the amount of the deficiency before the end of that Fiscal Year; at least forty days before the end of each Fiscal Year you shall notify Company if you have not received compensation equal to the Designated Dollar Amount under this Agreement for that Fiscal Year, and of the amount of the deficiency. Each such payment shall constitute an Advance and shall be applied in reduction of any and all monies due or becoming due to you under this Agreement. Company may not withhold or require you to repay any payment made to you pursuant to or subject to this paragraph 6.02.

(c) As used in this paragraph 6.02, the "Designated Dollar Amount" shall be:

(i) $9,000.00 for the first Fiscal Year of this Agreement;

(ii) $12,000.00 for the second Fiscal Year of this Agreement; and

(iii) $15,000.00 for each of the third through seventh Fiscal Years of this Agreement.

If in any Fiscal Year the aggregate amount of the compensation paid to you under this Agreement exceeds the Designated Dollar Amount, such excess compensation shall apply to reduce the Designated Dollar Amount for any subsequent Fiscal Years.

(d) You acknowledge that this paragraph is included to avoid compromise of Company's rights (including Company's entitlement to injunctive relief) by reason of a finding of applicability of California law, but does not constitute a concession by Company that California law is actually applicable.

6.03.(a) A "qualifying recompilation Album," in this paragraph 6.03, means an Album, such as a "Greatest Hits" or "Best of" Album, consisting of: (i) Recordings made under this Agreement and previously released in different Album combinations; and (ii) new Recordings (the "New Recordings" below) of at least three Compositions, made expressly for initial release in that Album and not applicable in reduction of your Recording Commitment.

(b) Within thirty days after Company's release of a qualifying recompilation Album on Top Line Phonograph Records sold Through Normal Retail Channels in the United States, Company shall pay you an Advance in the amount by which $_____ (the "Qualifying Recompilation Album Fund") exceeds the Recording Costs for the New Recordings. No other Advance shall be payable in connection with the New Recordings. Each such Advance shall

be reduced as provided in the first sentence of subparagraph 6.01(b). If your royalty account is in an unrecouped position (*i.e.*, if the aggregate of the Advances and other recoupable items charged to that account at the time of payment of that Advance exceeds the aggregate of the royalties credited to that account at the end of the last semi-annual royalty accounting period), the Qualifying Recompilation Album Fund shall be reduced by the amount of the unrecouped balance.

6.04. All Advances paid by Company to you pursuant to the terms of this Article 6 shall be deemed specifically to include all session union scale payments which may be required to be made pursuant to the terms of any applicable union agreements, and you agree to complete any documentation required by any applicable union or which may otherwise be necessary for Company to fulfill Company's obligations with respect to any union.

7. RIGHTS IN RECORDINGS:

7.01. You hereby agree that each Recording made or furnished to Company by you either under this Agreement or during the Term (a "Master Recording" or "Master" hereunder), from the Inception of Recording, shall be considered a work made for hire for Company. To the extent any such Master Recording is determined not to be a work made for hire for Company, you hereby assign to Company all right, title and interest in and to such Master Recording together with all rights (including copyright and other proprietary rights) in and to such Master Recording throughout the Territory in perpetuity. In addition, you hereby waive all so-called "moral rights" or any equivalent thereof otherwise available to you in connection with each such Master Recording. For all purposes, including for purposes of copyright law, Company is and shall be deemed the exclusive owner and author of all Masters, and all Records or other duplications in whatever form now or hereafter known, manufactured therefrom, together with the performances embodied therein, shall from the Inception of Recording be the sole property of Company in perpetuity, throughout the Territory, free from any claims by you or any other Person; and Company shall have the exclusive right to register the copyright in those Masters in Company's name as the author and owner of them and to secure any and all renewals and extensions of copyright throughout the Territory.

7.02. Without limiting the generality of the foregoing, Company and any Person authorized by Company shall have the unlimited, exclusive rights, throughout the Territory: (a) to manufacture Records, in any form and by any method now or hereafter known, derived from the Masters; (b) to sell, transfer or otherwise deal in the same under any trademarks, trade names and labels, or to refrain from such manufacture, sale and dealing; (c) to reproduce, adapt, transmit, distribute, communicate, make available and otherwise use the Masters in any medium and in any manner, including but not limited to use in audiovisual works, without payment of any compensation to you except the payments, if any, which may be expressly prescribed for the use concerned under Article 9; and (d) to publicly perform, exhibit, publicly display, make available or to permit the public performance of the Masters by means of radio broadcast, cable transmission, satellite transmission, television broadcast, digital audio transmission or any other method now or hereafter known.

7.03. You hereby irrevocably authorize, empower, and appoint Company your true and lawful attorney (a) to initiate and compromise any claim or action against infringers of Company's or your rights in the Masters; and (b) to execute in your name any and all documents and/or instruments necessary or desirable to accomplish the foregoing. The power of attorney granted under this paragraph 7.03 is coupled with an interest and is irrevocable.

8. MARKETING:

8.01.(a) Company and Company's Licensees shall have the perpetual right, without any liability to any Person, to use and to authorize other Persons to use the names (including, without limitation, all professional, group and other assumed or fictitious names or sobriquets), likenesses and biographical material of or relating to you, and the names (including all professional, group and other assumed or fictitious names or sobriquets), likenesses and biographical material of or relating to any producer and any other Person performing services in connection with the Masters, on and in connection with the exploitation of Recordings hereunder, on Internet websites and for purposes of advertising, promotion and trade and in connection with the marketing and exploitation of Records hereunder and Company's general goodwill advertising (advertising designed to create goodwill and prestige and not for the purpose of selling any specific product or service), without payment of additional compensation to you, you or any other Person. Company and its Licensees shall have the exclusive right, throughout the world, and shall have the exclusive right to authorize other Persons, to create, maintain and host any and all websites relating to you (and any member thereof) and to register and use the name "_____[*e.g.*, Artist name].com" and any variations thereof which embody your name (or the name of any member thereof) as Uniform Resource Locators ("URL's"), addresses or domain names (and, if you (or any member thereof) adopts a new name in accordance with this subparagraph, such new name(s) in URL's, addresses or domain names) for each website created by Company in respect of you (or any member thereof) (each, an "Artist Site"). All such websites, all elements thereof, and all rights thereto and derived therefrom shall be Company's property throughout the Territory and in perpetuity. At Company's reasonable request, you shall actively promote and support you Sites, including, without limitation, by providing current pictures, graphics, and editorial content in connection with the initial release of each Album Delivered in fulfillment of the Recording Commitment, by engaging in a reasonable number of activities by which you interacts with the website visitors, and by participating in other online promotions. You warrant and represent that the use of such names, likenesses, and biographical materials as described above in this subparagraph 8.01(a) shall not infringe upon the rights of any Person. If any Person challenges your right to use a professional name, Company may, at Company's election and without limiting any of Company's other rights and remedies, require you to cause you to adopt another professional name to be selected by you and approved by Company in Company's reasonable discretion without awaiting the determination of the validity of such challenge. Furthermore, during the Term, you shall not change the name by which you is professionally known without the prior written approval of Company.

(b) Without limiting the generality of any of Company's rights under this Agreement, Company and its Licensees shall have (i) the exclusive right, and may grant other Persons the right, to use reproductions or adaptations of packaging artwork, pictorial and graphic materials used for marketing or publicity, and other materials owned or controlled by Company or its Licensees, whether or not incorporating your name (including, without limitation, professional, group, or other assumed or fictitious names or sobriquets used by you), portraits, pictures, likenesses and logos, on merchandise of any kind (including without limitation the digitally distributed products and services described in subparagraph (ii)(B) below, in this subparagraph 8.01(b)); and (ii)(A) the exclusive right, and may grant other Persons the right, to use spoken word Recordings of your performances in connection with digitally distributed products and services (*e.g.*, digital content distributed via cellular phones, personal computers and other consumer electronic equipment and so-called interactive voice response services), and (B) the non-exclusive (except as otherwise provided in this Agreement) right, and may grant other Persons the right, to use your name (including, without limitation, professional, group, or other assumed or fictitious names or

sobriquets used by you), portraits, pictures, likenesses, and logos, in connection with digitally distributed products and services. Company and its Licensees shall have no obligation to pay any additional compensation to you or any other Person in connection with Company's or its Licensees' uses under this paragraph, except as provided in subparagraph 9.08(b) below. For purposes of this Agreement, uses by Company or its Licensees as described in this paragraph are hereby defined as "Merchandise Uses" herein.

8.02.(a) As Company reasonably requests, you shall appear for photography, poster, cover art, and the like, under the direction of Company or Company's designees and to appear for interviews with representatives of the communications media and Company's publicity personnel, at Company's expense.

(b) As Company reasonably requests, you shall perform for the recording of brief audio, visual, and/or audiovisual spoken-word recorded messages and fan greetings suitable for use on and in connection with digital products and services and/or digital media platforms (*e.g.*, Internet and wireless). In addition, as Company reasonably requests, you shall perform for the recording, by means of film, videotape or other audiovisual media, of performances of Compositions embodied on Masters (*e.g.*, Videos) and other audiovisual performances by you (*e.g.*, so-called "B-roll" and "behind-the-scenes" footage) suitable for use on and in connection with Records embodying your performances. You shall Deliver all such Recordings made under this subparagraph 8.02(b) to Company promptly after the production thereof.

(c) If you request by notice, Company shall make available to you for your approval, at Company's offices, any pictures of you or biographical material about you which Company proposes to use for packaging, advertising or publicity in the United States during the Term. Company shall not use any such material which you disapprove in writing, provided you furnish substitute material, satisfactory to Company in Company's sole discretion, in time for Company's use within its production and release schedules. This paragraph shall not apply to any material previously approved by you or used by Company. No inadvertent failure to comply with this paragraph shall constitute a breach of this Agreement, and you shall not be entitled to injunctive relief to restrain the continuing use of any material used in contravention of this paragraph.

8.03. [*Optional clause:*] During the Term, in respect of Phonograph Records manufactured by Company and distributed for sale to its retail distribution accounts in the United States, Company shall not, without your consent and notwithstanding anything in Article 9:

(a) Couple any of the Masters with Recordings not embodying your performances on Phonograph Records released as Singles; or, with respect to any other Phonograph Records, so couple more than two of the Masters on each such Phonograph Record, except promotional Records, Records described in the last sentence of paragraph 10.03, or Records created by Company's custom marketing operations for sale to educational institutions.

(b) Sell Top Line Albums derived from any of the Masters as "cut-outs," within 18 months after the initial release of the Recording concerned on Records in the United States.

8.04. [*Optional clause:*] Company shall not use the Masters on "Premium Records" without your consent and notwithstanding anything in Article 9. A "Premium Record" is a Phonograph Record, other than Records described in the last sentence of paragraph 10.03, produced for use in promoting the sale of merchandise other than Records, which bears the name of the sponsor for whom the Phonograph Record is produced.

8.05. [*Optional clause:*] Company shall not release "outtakes" on Phonograph Records without your consent. ("Outtakes" are preliminary or unfinished versions of the Masters released on Records.)

8.06. [*Optional clause:*] Provided you have fulfilled all your obligations under this Agreement, Company shall release each Album recorded in fulfillment of your Recording Commitment in the United States within three months following Delivery of the Album concerned. If Company fails to do so you may notify Company, within thirty days after the end of the three-month period concerned, that you intend to terminate the Term unless Company physically releases the Album within sixty days after Company's receipt of your notice (the "U.S. Release Cure Period"). If Company fails to physically release the Album in the United States before the end of the U.S. Release Cure Period you may terminate the Term by giving Company notice within thirty days after the end of the U.S. Release Cure Period. On receipt by Company of your termination notice, the Term shall end and all parties shall be deemed to have fulfilled all of their obligations hereunder except those obligations which survive the end of the Term (*e.g.*, warranties, re-recording restrictions and obligations to pay royalties). Your only remedy for failure by Company to physically release an Album in the United States shall be termination in accordance with this subparagraph. If you fail to give Company either of the notices described in the foregoing provisions of this paragraph, within the time periods specified, your right to terminate shall lapse. The running of the three-month and sixty-day periods referred to above shall be suspended (and the expiration date of each of those periods shall be postponed) for the period of any suspension of the running of the Term under paragraph 15.03. If any such three-month or sixty-day period would otherwise expire on a date between October 15 and the next January 16, the running of the applicable period shall be suspended for the duration of the period between October 15 and January 16 and its expiration date shall be postponed by the same number of days (*i.e.*, 92 days).

8.07. [*Optional clause:*] In preparation for the initial physical release in the United States of each Album of the Recording Commitment, Company shall undertake to consult with you regarding the proposed Album cover layout and the picture or art to be used on the cover. Company's decision on all packaging elements shall be final. All rights in any artwork or related material furnished or selected by you or used at your request, including the copyright and the right to secure copyright, shall be Company's property throughout the Territory and in perpetuity. The first sentence of this paragraph shall apply only to Albums Delivered within ninety days after the end of the time prescribed in Article 3.

9. ROYALTIES:

9.01. Company shall accrue to your royalty account, in accordance with the provisions of Article 11 below, royalties as described below; provided, however, no royalties shall be due and payable to you until such time as all Advances have been recouped by or repaid to Company. Royalties shall be computed by applying the applicable royalty percentage rate specified below in this Article 9 to the applicable Royalty Base Price in respect of the Net Sales of Records described in the paragraph (or subparagraph) concerned, except where such royalties are accrued on a Net Receipts basis for which the provisions of paragraph 14.20 below shall govern.

(a) The royalty rate (the "Basic U.S. Rate") in respect of Net Sales of Records (other than Audiovisual Records) consisting entirely of Masters made during the respective Contract Periods specified below and sold by Company Through Normal Retail Channels in the United States ("USNRC Net Sales") shall be as follows:

TYPE OF	CONTRACT	BASIC U.S.

RECORD	PERIODS	RATES	
	Albums	1st and 2nd	_____ %
	Albums	3rd and 4th	_____ %
	Albums	5th and 6th	_____ %
	Albums	7th	_____ %
	Seven-inch Singles	All%	_____ %
	Twelve-inch Singles	All	_____ %
	Digital Sides	All	_____ %
	EPs	All	_____ %

(b) The royalty rate (the "Escalated U.S. Rate") in respect of USNRC Net Sales of each Album recorded pursuant to your Recording Commitment in excess of the following number of units, shall be the applicable rate set forth below rather than the otherwise applicable Basic U.S. Rate or any prior and otherwise applicable Escalated U.S. Rate:

ALBUM	USNRC NET SALES UNITS	ESCALATED U.S. RATES
Albums in first and second Contract Periods	500,000 units 1,000,000 units	_____ %
Albums in third and fourth Contract Periods	500,000 units 1,000,000 units	_____ %
Albums in fifth and sixth Contract Periods	500,000 units 1,000,000 units	_____ %
Albums in seventh Contract Period	500,000 units 1,000,000 units	_____ %

9.02. The royalty rate (the "Foreign Rate") on Net Sales of Records (other than Audiovisual Records) sold for distribution Through Normal Retail Channels outside of the United States by Company, or by Company's principal Licensee in the territory concerned, shall be computed at the applicable percentage of the Basic U.S. Rate that otherwise would be applicable to USNRC Net Sales of the applicable Record as follows:

TERRITORY	% OF BASIC U.S. RATE
Canada	75%
U.K. and Japan	66 2/3%
Rest of the World75%	50%

If any Company Licensee accounts to Company on the basis of less than 100 percent of Net Sales, Company shall account to you for the Records concerned on the same basis, but not

on less than 90 percent of Net Sales.

9.03.(a) With respect to Records (other than Audiovisual Records) licensed by Company for sale through any Club Operation in the United States, Company shall pay you 50 percent of Company's Net Receipts solely attributable to the Masters.

(b) With respect to Records (other than Audiovisual Records) sold through any Club Operation outside of the United States, the applicable Foreign Rate shall be 5 percent multiplied by the applicable percentage of the Basic U.S. Rate set forth in paragraph 9.02 above for the country concerned.

(c) No royalty shall be payable with respect to: (i) Records received by members of any Club Operation in an introductory offer in connection with joining it or upon recommending that another join it or as a result of the purchase of a required number of Records including, without limitation, Records distributed as "bonus" or "free" Records; or (ii) Records for which the Club Operation is not paid. Notwithstanding the foregoing, at least 50 percent of all Phonograph Records distributed through any Club Operation during the Term, on which you would otherwise be entitled to a royalty under this paragraph 9.03 (without regard to the first sentence of this subparagraph 9.03(c)), shall be deemed to have been sold. Such computations shall be made on a cumulative basis, and your royalty account adjusted accordingly, each sixth accounting period upon your request.

9.04. The royalty rate on any Record described in section (i), (ii) or (iii) of this sentence shall be one-half (1/2) of the royalty rate hereunder that would otherwise apply if the Record concerned were sold Through Normal Retail Channels: (i) any catalog Record sold by Company to educational institutions or libraries, or to other clients of Company for their promotion or sales incentive purposes; (ii) any Record sold in conjunction with a substantial television advertising campaign, at any time during the period commencing on the first day of the calendar semi-annual period in which that campaign begins and ending on the last day of the second calendar semi-annual period thereafter; and (iii) any non-catalog Record created on a custom basis for clients of Company.

9.05.(a) The royalty rate on any Budget Record shall be one-half (1/2) of the Basic U.S. Rate, the Foreign Rate or other royalty rate that would otherwise apply if the Record concerned was sold Through Normal Retail Channels. The royalty rate on a Mid-price Record or any Record sold through military exchange channels shall be two-thirds (2/3) of the Basic U.S. Rate, the Foreign Rate or other royalty rate that would otherwise apply if the Record concerned was sold Through Normal Retail Channels. (The immediately preceding two sentences shall not apply to Albums Delivered in fulfillment of the Recording Commitment (other than the first such Album) that are sold as Budget Records in the United States within twelve months, or as Mid-price Records in the United States within six months, after the initial release of the Masters concerned on Records in the United States.) The royalty rate on any type of Record which is not identified in paragraph 9.01 above shall be one-half (1/2) of the otherwise applicable Basic U.S. Rate or Foreign Rate for Albums in the configuration concerned set forth in paragraph 9.01 or 9.02 above.

(b) The royalty rate on a Multiple Record Set shall be one-half (1/2) of the otherwise applicable royalty rate set forth in this Article 9 if the Royalty Base Price of that Multiple Record Set is the same as the Royalty Base Price applicable to Top Line single-unit Records in the same configuration marketed by Company or Company's principal Licensee in the territory concerned at the beginning of the royalty accounting period concerned. If a different Royalty Base Price applies to a Multiple Record Set, the royalty rate prescribed in the preceding sentence shall be adjusted in proportion to the variance in the Royalty Base

Price, provided that in no event shall it be more than the otherwise applicable royalty rate set forth in this Article 9.

9.06.(a) The royalty rate on Net Sales of Audiovisual Records which contain Masters hereunder and are manufactured and distributed or digitally transmitted by Company or Company's distributor in the United States or by any international components of Company or Company's distributor ("Foreign Distributor," below) elsewhere, shall be 10 percent on units distributed in the United States and 7 percent on units distributed outside the United States. Notwithstanding the immediately preceding sentence, on such units distributed through Club Operations, such royalty rates shall be the lower of: (x) 50 percent of the foregoing applicable rate set forth in this section 9.06(a)(1) or (y) 10 percent of the Club Operation's selling price.

(b)(i) With respect to uses of Videos which produce revenues directly for Company, other than the uses described in subparagraph 9.07(a), Company shall pay you a royalty equal to a percentage of Company's Net Receipts derived from such uses (the "Net Receipts Royalty"), in accordance with the provisions of paragraph 9.08 below.

(ii) The uses on which the Net Receipts Royalty shall be payable include, without limitation, uses on Audiovisual Records manufactured for distribution by divisions of Company or any of its international components, or joint ventures in which they participate, other than those specified in subparagraph 9.06(a).

(c) The following amounts shall be charged in reduction of all royalties payable or becoming payable to you in connection with uses of audiovisual Recordings under this paragraph 9.06:

(i)(A) All royalties and other compensation which may become payable to any Person, notwithstanding paragraphs 12.02 and 12.03, for the right to make any uses of Controlled Compositions in audiovisual Recordings; and (B) 50 percent of all such amounts which may become payable in connection with other Compositions.

(B)(1) All payments to record producers or other Persons, except those referred to in clause (2) of this sentence, which are measured by uses of audiovisual Recordings or proceeds from those uses, whether such payments are to be computed as royalties on sales, as participations in revenues, or in any other manner; and (2) 50 percent of all such payments which are attributable to the production of Videos. (The amounts chargeable under this section 9.06(c)(B) shall not include non-contingent advances, but shall include payments, including payments in fixed amounts, which accrue by reason that such sales, revenues or other bases for computation attain particular levels.)

9.07.(a) Company shall credit your royalty account hereunder with an amount equal to 50 percent of Company's Net Receipts from any royalty or other payment paid to Company and directly attributed to a Master Recording licensed by Company to another Person for use: (i) in the manufacture and distribution of Phonograph Records, provided that such credit to your royalty account shall not exceed the same royalty amount that would otherwise be credited to your account hereunder for such use if Company manufactured or distributed the Phonograph Record concerned; or (ii) in synchronization with theatrical motion pictures, television programs, or radio or television commercials.

(b) Provided that a royalty or other payment is not otherwise provided for such uses elsewhere in this Article 9, including, without limitation, pursuant to paragraph 9.07(a) above, in respect of any license of a Master Recording by Company to another Person, or in respect of any Ancillary Exploitation, for which license or Ancillary Exploitation (as

applicable) Company receives a royalty or other payment that is readily and directly attributed to the use of such Master Recording or such Ancillary Exploitation (as applicable) (the "Per-Use Fee"), Company shall credit your royalty account hereunder with an amount equal to a percentage of Company's Net Receipts from such Per-Use Fee which is the same as the percentage of the applicable Basic U.S. Rate or Foreign Rate for Albums or Digital Sides, as applicable, or, in the case of Audiovisual Records, the rate set forth in section 9.07(a)(i) above sold for distribution in the country concerned, provided that such credit to your royalty account in respect of Masters shall not exceed the amount that would otherwise be credited to your account hereunder for a Top Line sale Through Normal Retail Channels of a comparable Record if sold by Company in the applicable territory. Notwithstanding anything to the contrary in this subparagraph 9.08(b), any Merchandise Use as part of the same commercial transaction as an exploitation of a Master Recording, for which Company receives or is credited with a royalty or other payment that is readily and directly attributable to such combined exploitation, shall be treated for purposes of calculating the payments payable to you hereunder, solely as a sale or license of a Master Recording under paragraph 9.01 or subparagraph 9.07(b), as applicable.

(c) If another recording artist, producer or any other Person is entitled to a royalty or other payment with respect to the same use of a Master Recording or the same Ancillary Exploitation as provided for under this paragraph 9.07, the amount to be credited to your royalty account under this paragraph shall be apportioned in the same ratio as that among your and that other Person's respective basic royalty percentages.

(d) All payments and credits pursuant to this paragraph 9.07 shall be deemed specifically to include all payments which may be required to be made pursuant to the terms of any applicable union agreements. For purposes of this paragraph 9.07 only, "Company" shall be deemed to refer to Company with respect to Records sold for distribution in the United States or Canada, and, with respect to distribution of Records in territories other than the United States or Canada shall be deemed to refer to Company's principal Licensee in the territory concerned.

10. MISCELLANEOUS ROYALTY PROVISIONS:

Notwithstanding anything to the contrary contained in Article 9:

10.01. In respect of Joint Recordings, the royalty rate to be used in determining the royalties payable to you hereunder shall be computed by multiplying the royalty rate otherwise applicable thereto by a fraction, the numerator of which shall be one and the denominator of which shall be the total number of royalty artists whose performances are embodied on a Joint Recording.

10.02. The royalty rate (the "Apportioned Royalty") on a Record embodying Masters hereunder together with other Recordings shall be computed by multiplying the royalty rate otherwise applicable by a fraction, the numerator of which is the number of Sides embodying Masters hereunder and the denominator of which is the total number of Sides contained on such Record. Notwithstanding the foregoing, the Apportioned Royalty on an Audiovisual Record shall in no event exceed the royalty rate which would apply if the Apportioned Royalty were computed by apportionment based on the actual playing time of each Recording embodied in the Record concerned. To the extent that any such Audiovisual Record embodies an audio-only Master Recording hereunder (as distinguished from a Video hereunder), the applicable Apportioned Royalty shall be one-half (1/2) of the Apportioned Royalty that would otherwise apply under this paragraph 10.02.

10.03. No royalties shall be payable to you in respect of Records sold or distributed by Company or Company's Licensees for promotional purposes; as surplus, overstock or scrap; as cutouts after the listing of such Records has been deleted from the catalog of Company or the particular Licensee; as "free," "no charge" or "bonus" Records (whether or not intended for resale; whether billed or invoiced as a discount in the price to Company's customers or as a Record shipped at no charge); to Company employees and their relatives; to radio stations; as server, ephemeral or incidental copies; as excerpts that are thirty seconds or less in duration; or in territories where the Recordings concerned are in the public domain. No royalties shall be payable to you on Records containing Recordings of not more than two Masters hereunder, intended for free distribution as "samplers" to automobile or audio equipment manufacturers, distributors and/or purchasers (whether or not postage, handling or similar charges are made); for Records distributed for use on transportation carriers; or for Records distributed for use in jukeboxes.

10.04. If legislation requiring the payment of copyright royalties for the public performance of Records is enacted in the United States and Company receives such royalties with respect to Masters hereunder, and you do not receive or waive any similar payment from any Person other than Company, then Company shall credit your royalty account with that portion of such royalties as required by Company's collective bargaining agreement with the American Federation of Musicians or the American Federation of Television and Radio Artists, whichever is applicable. In respect of Joint Recordings, that portion shall be determined as provided in paragraph 10.01, unless a different method of apportionment is required under the applicable collective bargaining agreement. If no such agreement applies, Company shall negotiate with you in good faith regarding the sharing of any such royalties with you.

11. ROYALTY ACCOUNTINGS:

11.01.(a) Company shall compute your royalties as of each June 30 and December 31 for the prior six months, in respect of each such six-month period in which there are sales or returns of Records or any other transactions on which royalties are payable to you hereunder or liquidations of reserves established previously. On the next September 30th or March 31st Company shall send you a statement covering those royalties and shall pay you any royalties which are due after deducting unrecouped Advances.

(b) Company shall have the right to establish during each semi-annual accounting period a royalty reserve against anticipated returns and credits, or anticipated payments referred to in subparagraph 9.07(c) above, of up to 25 percent of the royalty earnings associated with the units of each Record reported as distributed to Company's and its Licensees' customers in that period. (Notwithstanding the preceding sentence, Company may establish a larger reserve if any such Record is sold subject to return privileges more liberal than Company's normal return policies, or if Company anticipates returns and credits which justify the establishment of such a larger reserve in Company's sole discretion.) Each royalty reserve shall be liquidated equally and in full over the four semi-annual accounting periods following the accounting period during which the applicable reserve is initially established. If you reasonably believe that the royalty reserve established during any accounting period is excessive, then, promptly following your request by notice to Company within sixty days after the date on which Company is deemed to have sent you an accounting statement for such accounting period under paragraph 11.03 below, Company will review the reserves established during such accounting period and will make such adjustments as Company may determine are appropriate, in its reasonable judgment, based on sales reports for your Records, your sale and returns history, and any other factors that Company deems relevant. If Company makes any overpayment to you, you shall reimburse Company for that

overpayment; Company may also deduct any overpayment from any monies due or becoming due to you. If Company pays you any royalties on Records which are returned later or on other transactions which are reversed, those royalties shall be considered overpayments.

11.02. Company shall compute your royalties in the same national currency in which Company's Licensee pays Company for that sale, and Company shall credit those royalties to your account at the same rate of exchange at which the Licensee pays Company. For purposes of accounting to you, Company shall treat any sale outside of the United States as a sale made during the same six-month period in which Company receives Company's Licensee's accounting and payment for that sale. (For the purposes of this paragraph, only, any royalties credited by a Licensee to Company's account but charged in recoupment of a prior advance made to Company and retained by the Licensee by reason of that charge shall be deemed paid to Company and received by Company when Company receives the Licensee's accounting reflecting the credit and charge concerned.) If any Company Licensee deducts any taxes from its payments to Company, Company may deduct a proportionate amount of those taxes from your royalties. If any law, any government ruling, or any other restriction affects the amount of the payments which a Company Licensee can remit to Company, Company may deduct from your royalties an amount proportionate to the reduction in the Licensee's remittances to Company. If Company cannot collect payment in the United States in U.S. Dollars, Company shall not be required to account to you for that sale, except as provided in the next sentence. Company shall, at your request and at your expense, deduct from the monies so blocked and deposit in a foreign depository the equivalent in local currency of the royalties which would be payable to you on the foreign sales concerned, to the extent such monies are available for that purpose, and only to the extent to which your royalty account is then in a fully recouped position. All such deposits shall constitute royalty payments to you for accounting purposes.

11.03.(a) Company shall maintain Books and Records which you may examine, at your expense. You may make those examinations only for the purpose of verifying the accuracy of royalty accountings rendered to you under paragraph 11.01. You may make such an examination only once during each twelve-month period, only once for a particular accounting period, and only within three years after the end of an accounting period with respect to accountings during the period concerned. You may make those examinations only during Company's usual business hours, on reasonable written notice for a reasonably convenient time, and at the place where Company keeps the Books and Records to be examined. You may appoint a qualified royalty auditor to make such an examination for you. The rights hereinabove granted to you shall constitute your sole and exclusive rights to examine Company's books and records.

(b) If, in the course of any examination, made in accordance with paragraph 11.03(a), of royalties payable to you under Article 9, you and Company agree in writing that there has been an undercrediting of royalties to your royalty account or accounts hereunder exceeding 10 percent of the total royalties credited by Company to such accounts in the aggregate for the periods covered by such examination, or if an undercrediting of royalties exceeding such amount is determined in a final non-appealable judgment by a court of competent jurisdiction, Company will pay interest to you on any portion of such agreed-upon or court-determined undercrediting of royalties that is paid to you at the time of such agreement or determination, at the prime rate in effect on the date on which Company is deemed to have sent you the royalty statement for the last accounting period covered by the examination, as such rate is quoted in the "Money Rate" section of The Wall Street Journal (or, if The Wall Street Journal is discontinued or is no longer quoting such rate, any other similarly reputable published source), calculated from the date such royalties were payable.

11.04. You acknowledge that Company's Books and Records contain confidential trade information and you warrant and represent that neither you nor your representatives shall communicate to others or use on behalf of any other Person any facts or information obtained as a result of such examination of Company's Books and Records.

11.05. If you have any objections to a royalty statement, you shall give Company specific notice of that objection and your reasons therefor within three years after the end of an accounting period with respect to accountings during the period concerned. Each royalty statement shall become conclusively binding on you at the end of that three-year period, and you shall no longer have any right to make any other objections to the statement. You shall not have the right to sue Company in connection with any royalty accounting, or to sue Company for royalties on Records sold or Net Receipts derived by Company during any period a royalty accounting covers, unless you commence the suit within six months after the end of that three-year period. If you commence suit on any controversy or claim concerning royalty accountings rendered to you under this Agreement, (a) any recovery thereon shall be limited to money damages only, and (b) you shall not have any right to seek termination of the Term or avoid the performance of your obligations hereunder by reason, in whole or in part, of any such claim. The preceding three sentences shall not apply to any item in a royalty accounting if a court of competent jurisdiction establishes that the item was fraudulently misstated by Company (in which case your right to terminate the Term shall be governed by paragraph 19.07 below).

11.06. You hereby authorize and direct Company to withhold from any monies due you from Company any portion thereof required to be withheld by the United States Internal Revenue Service and/or any other governmental authority, and to pay same to the United States Internal Revenue Service and/or such other authority. No Advances or other payments shall be made pursuant to this Agreement until you have completed the Internal Revenue Service Form attached hereto as Schedule A.

12. LICENSES FOR MUSICAL COMPOSITIONS:

12.01. You hereby grant to Company and Company's Licensees an irrevocable license, under copyright, to reproduce each Controlled Composition on Records of Masters hereunder other than Audiovisual Records, and to distribute those Records in the United States and Canada.

(a) For that license, Company (or Company's Licensees, as applicable) shall pay Mechanical Royalties, on the basis of Net Sales, at the following rates:

(i) On Phonograph Records and Digital Sides sold for distribution in the United States: The rate equal to 75 percent of the minimum compulsory license rate applicable to the use of Compositions on phonorecords under the United States copyright law (which as of the date hereof is nine and one-tenth cents (9.1cent(s)) per Composition) on whichever of the following dates is the earlier: (A) The date of completion of Delivery of the Masters constituting the Album project (or other recording project) concerned; or (B) The date of expiration of the time within which the Recording concerned is required to be Delivered under Article 3.

(ii) On Phonograph Records and Digital Sides sold for distribution in Canada: The rate prescribed in subsection 12.01(a)(i) above, or the rate equal to 75 percent of the lowest Mechanical Royalty rate prevailing in Canada on a general basis on the applicable date specified in subsection 12.01(a)(i) above with respect to the use of Compositions on Top

Line Records, whichever rate is lower.

(iii) On all other Records sold for distribution in the United States: The rate equal to 75 percent of the minimum compulsory license rate (on the applicable date specified in subsection 12.01(a)(i) above) that is implemented by the United States Copyright Office in respect of the use of Compositions on such Records; provided, however, that: (x) if, at the time any such Records are distributed, no such compulsory license rate has been implemented, then Mechanical Royalties for the use of Compositions on such Records shall be paid, after such compulsory license rate has been implemented by the United States Copyright Office, on all such Records (retroactively from the first such Record distributed hereunder); and (y) if at any time legislation is enacted in the United States that expressly prohibits payment of less than the minimum compulsory license rate, then solely with respect to the reproduction of Compositions on such Records, Company shall pay Mechanical Royalties at the minimum compulsory rate so prescribed by law for so long as such legislation remains in effect. The absence of any such compulsory license rate shall not impair the effectiveness of the license granted herein.

(iv) On all other Records sold for distribution in Canada: The rate equal to 75 percent of the lowest Mechanical Royalty rate prevailing in Canada on a general basis (on the applicable date specified in subsection 12.01(a)(i) above) that is applicable to the use of Compositions on such Records; provided, however, that: (y) if, at the time such Records are distributed, no such prevailing rate exists, then Mechanical Royalties for such Records shall be paid after such rate becomes generally applicable on all such Records (retroactively from the first such Record distributed hereunder); and (y) if at any time legislation is enacted in Canada that expressly prohibits payment of less than such prevailing rate, then solely with respect to the reproduction of Controlled Compositions on such Records, Company shall pay Mechanical Royalties at the applicable rate so prescribed by law for so long as such legislation remains in effect. The absence of any such license rate shall not impair the effectiveness of the license granted herein.

(v) The Mechanical Royalty on any Record referred to in paragraphs 9.04 and 9.05, or on any Record sold through a Club Operation, shall be three-fourths (3/4) of the amount fixed above. The preceding sentence shall not apply if the Record concerned is sold through military exchange channels.

(vi) If the Composition is an arranged version of work in the public domain, the Mechanical Royalty on that Composition shall be one-half (1/2) of the applicable amount fixed in section 12.01(a)(i) above. Notwithstanding the foregoing, if ASCAP, BMI or SESAC accords regular performance credit for any Controlled Composition which is an arranged version of a public domain work, the Mechanical Royalty rate on that Composition shall be apportioned according to the same ratio used by ASCAP, BMI or SESAC in determining that performance credit. Company shall not be required to pay you at that rate unless you furnish Company with satisfactory evidence of that ratio.

(vii) Notwithstanding anything to the contrary herein, no Mechanical Royalties or other payments shall be payable for any Records described in paragraph 10.03 or for Compositions which are one hundred seconds or less in length or for uses described in the next sentence. The rights granted to Company herein include the rights to: (A) publicly perform any Controlled Composition by or through any means or manner not otherwise licensed by a performing rights society and (B) incidentally reproduce or reproduce, in the form of server, ephemeral or other transient copies (solely to the extent such use is not otherwise licensed pursuant to a compulsory or voluntary license), any such Controlled Composition in connection with any transmission thereof. In addition, you hereby waive all

so-called "moral rights" or any equivalent thereof otherwise available to you in connection with each such Controlled Composition.

(b)(i) The maximum Mechanical Royalty for all Compositions, including Controlled Compositions, embodied in or transmitted as part of any Album, shall be limited to ten times the amount which would be payable on the Album under section 12.01(a)(i) above if it contained only one Controlled Composition. The maximum Mechanical Royalty shall be limited to two times that amount on any Single, five times that amount on any EP, and three times that amount on any Twelve-inch Single or any other Record which is not an Album, a Single, or an EP.

(ii) The maximum Mechanical Royalty under this subparagraph 12.01(b) on a Multiple Record Set shall be the same amount prescribed in section 12.01(b)(i), if the Royalty Base Price of that Multiple Record Set is the same as the Royalty Base Price applicable to the Top Line single-unit Albums marketed by Company or Company's principal Licensee in the territory concerned at the beginning of the royalty accounting period concerned. If a different Royalty Base Price applies to a Multiple Record Set, the maximum Mechanical Royalty shall be adjusted in proportion to the variance in the Royalty Base Price, provided that in no event shall it be more than twice the maximum royalty prescribed in section 12.01(b)(i).

(c) Company shall compute Mechanical Royalties on Controlled Compositions as of the end of each calendar quarter-annual period in which there are sales or returns of Records on which Mechanical Royalties are payable hereunder, or liquidations of Mechanical Royalty reserves established previously. On the next May 15, August 15, November 15 or February 15, Company shall send a statement covering those royalties and shall pay any net royalties which are due. Each Mechanical Royalty reserve maintained by Company against anticipated returns and credits shall be held for not longer than one year after it is established. Mechanical Royalty reserves shall not be established in accordance with practices less favorable to you than those used generally by Company for purposes of Company's accountings to music publishers represented by the Harry Fox Agency. Paragraphs 11.03, 11.04, 11.05 and 11.06 shall apply to Mechanical Royalty accountings.

12.02. You also grant to Company and Company's Licensees an irrevocable license under copyright to reproduce each Controlled Composition in Videos, to reproduce, distribute, transmit and perform those Videos in any manner (including, without limitation, publicly and for profit), to manufacture and distribute Audiovisual Records and other copies of those Videos, to exploit them otherwise, and to promote, advertise and market Records, and to reproduce lyrics (including translations thereof), of each Controlled Composition, in whole or in part, on and in Records and in any other manner and to manufacture and distribute those Records and exploit them otherwise, each by any method and in any form known now or in the future, throughout the Territory, and to authorize others to do so. Company and Company's Licensees shall not be required to make any payment in connection with those uses, and that license shall apply whether or not Company receives any payment in connection with any use of any Video or other Record. If any exhibition of a Video is also authorized under another license (such as a public performance license granted by ASCAP, BMI or SESAC), that exhibition shall be deemed authorized by that license instead of this Agreement. In all events, Company and Company's Licensees shall have no liability by reason of any such exhibition.

12.03.(a) If any Masters hereunder contain copyrighted Compositions which are not Controlled Compositions, you shall use reasonable efforts to obtain licenses covering those Compositions for Company's and Company's Licensees' benefit on the same terms as those

which apply to Controlled Compositions under this Article 12. In all events you shall obtain licenses covering them for the United States providing for royalties at the minimum rate applicable to the use of Compositions on phonorecords under the compulsory license provisions of the United States copyright law, and licenses covering them for Canada providing for royalties at the lowest rates prevailing in Canada on a general basis with respect to the use of Compositions on comparable Records, and otherwise on terms not less favorable to Company in any respect than those prescribed in the form attached hereto as Schedule B; and subparagraph 12.01(b) shall continue to apply.

(b) You hereby agree that all Controlled Compositions shall be available for licensing by Company and Company's Licensees, for reproduction, distribution, communication, making available and public performance in each country of the Territory outside of the United States and Canada through the author's society or other licensing and collecting body generally responsible for such activities in the country concerned. You shall cause the issuance of effective licenses, under copyright and otherwise, to reproduce each Controlled Composition on Records and distribute, communicate, make available and perform those Records outside the United States and Canada, on terms not less favorable to Company or Company's Licensees than the terms prevailing on a general basis in the country concerned with respect to the use of Compositions on comparable Records.

13. WARRANTIES; REPRESENTATIONS; RESTRICTIONS; INDEMNITIES:

13.01. You warrant and represent that:

(a) You have the right and power to enter into and fully perform this Agreement. If you are a corporation, that you are and shall continuously be a corporation in good standing in the jurisdiction of your incorporation.

(b) Company shall not be required to make any payments of any nature for, or in connection with, the acquisition, exercise or exploitation of rights by Company pursuant to this Agreement except as specifically provided in this Agreement. You shall be solely responsible for: (i) all Recording Costs in excess of the applicable Recording Fund fixed in paragraph 6.01 above (as reduced by any Advances or other payments or expenses which do or are intended to reduce such Recording Fund), or in excess of the approved budget for any Album for which there is no Recording Fund; (ii) all royalties payable to any producers, mixers, remixers or any other Persons contributing to the recording of the Masters (subject to subparagraph 2.02(b) above); (iii) all Mechanical Royalties in excess of the applicable rates and/or the applicable maximum Mechanical Royalties specified in Article 12 above; (iv) all Special Packaging Costs; and (v) all other costs, if any, which are in excess of the fixed amounts provided herein which Company has agreed to pay. All of the amounts set forth in the immediately preceding sentence shall be paid by you promptly (or reimbursed by you if paid by Company). Such amounts may also be deducted from all monies becoming payable to you by Company under this Agreement or otherwise to the extent to which they have not been paid or reimbursed by you as provided in the preceding sentence.

(c)(i) The Masters shall be produced in accordance with the rules and regulations of the American Federation of Musicians, the American Federation of Television and Radio Artists and all other unions having jurisdiction, including without limitation paragraph 31 of the 1997-2001 AFTRA National Code of Fair Practice for Sound Recordings (as modified by any successor agreement); and that all Persons rendering services in connection with the Masters shall fully comply with the provisions of the Immigration Reform Control Act of 1986.

(ii) You are or will become and will remain, to the extent necessary to enable the performance of this Agreement, a member in good standing of all labor unions or guilds, membership in which may be lawfully required for the performance of your services hereunder.

(d)(i) The Materials (as hereinafter defined) or any use thereof, shall not violate any law and shall not infringe upon or violate the rights of any Person (including, without limitation, contractual rights, copyrights, rights of publicity and rights of privacy); and that each Personnel List (as defined in paragraph 14.10, below) furnished hereunder is and shall be true, accurate and complete. "Materials," as used in this Article, means: (A) the Masters hereunder, (B) all Controlled Compositions, (C) each name used by you, individually or as a group, in connection with Masters or the exploitation of Company's rights hereunder, and (D) all other musical, dramatic, artistic and literary materials, ideas, and other intellectual properties, contained in or used in connection with any Masters hereunder or their packaging, sale, distribution, advertising, marketing, promotion, publicizing or other exploitation or the marketing or promotion of you or of Company's rights hereunder. Company's acceptance and/or utilization of Recordings, Materials or Personnel Lists hereunder shall not constitute a waiver of your representations, warranties or agreements in respect thereof, or a waiver of any of Company's rights or remedies.

(ii) Without limitation of the foregoing, you warrant and represent that Company's use of any Masters which embody Sampled Materials, as defined in paragraph 4.02(b) above, shall not infringe upon or violate the rights of any Person (including, without limitation, contractual rights, copyrights, rights of publicity and rights of privacy).

(e) No Person other than Company has any right to use, and during the Term no Person other than Company shall be authorized to use, any existing Recordings of your performances for making, promoting or marketing Records.

13.02.(a) During the Term: (i) You shall not enter into any agreement which would interfere with the full and prompt performance of your obligations hereunder; and (ii) You shall not perform or render any services, as a performing artist, a producer, or otherwise, that result in the making, promoting, broadcasting or marketing Recordings or Records for any Person except Company.

(b)(i) A "restricted Composition," for the purposes of this paragraph only, is a Composition which shall have been recorded by you for a Master hereunder or for a Recording under any other agreement with Company.

(ii) You shall not authorize or knowingly permit your performance of any restricted Composition or any adaptation of a restricted Composition to be recorded for any Person other than Company for the purpose of making Recordings or Records, or for any other purpose (including, without limitation, radio or television commercials), at any time before the later of the following dates: (A) the date five years after the date of Delivery to Company of all the Recordings made in the course of the same Album (or other) recording project as the Recording of the restricted Composition concerned, or (B) the date two years after the expiration of the Term. The period during which such restrictions apply to any particular Composition are sometimes referred to herein as the "Rerecording Restriction Period" for such Composition.

(iii) During the Rerecording Restriction Period, neither you nor any Person deriving rights from you shall authorize the use of any Controlled Composition in a radio or television commercial or any other advertising or promotional matter, unless you first require the

Person to be authorized to make the use concerned to agree in writing, for Company's benefit, that the use shall not involve a "sound-alike" Recording resembling a performance of that Composition recorded by you before or after the date of authorization. (A "sound-alike" Recording is a different Recording which imitates or simulates the Recording concerned by using a substantially similar musical arrangement or otherwise.) If you or any Person deriving rights from you shall determine to grant any rights in any Controlled Composition to any music publisher or any other Person or to authorize the use of any music or lyrics written by you in a Composition together with material written by any other Person, or if you shall determine to collaborate with any other Person in the authorship of any Composition, you shall first require the other Person to the transaction or collaboration concerned to enter into a written agreement, for Company's benefit, requiring compliance with this section 13.02(b)(iii). You shall furnish Company with a fully-executed copy of each agreement required by this section 13.02(b)(iii), promptly after the execution thereof.

(c) You shall not perform for a Person other than Company without an express written agreement with the Person for whom the performance is to be made, for Company's benefit, prohibiting the use of such performance for making, promoting, or marketing Recordings or Records, or for digital broadcasts or other transmissions, distributions or other communications now or hereafter known, in violation of the restrictions prescribed in subparagraphs 13.02(a) and 13.02(b) above. You shall furnish Company with a fully executed copy of each such agreement promptly after the execution thereof.

13.03 Notwithstanding anything to the contrary expressed or implied herein, you may perform as a background instrumentalist or vocalist ("sideman") accompanying a featured artist for the purpose of making Records for others, provided:

(a) You may not do so unless you have then fulfilled all of your obligations under this Agreement, and the engagement does not interfere with the continuing prompt performance of your obligations to Company;

(b)(i) You may not render a solo or "step-out" performance, nor perform on more than one Recording embodied on any Record, and

(ii) The musical style of the Recording may not be substantially similar to the characteristic musical style of Recordings made by you for Company (*i.e.*, likely to cause confusion as to the identity of the featured performer);

(c) You may not record any material which you have previously recorded for Company;

(d) You may not accept the sideman engagement unless the Person for whom the Recordings are being made agrees in writing, for Company's benefit, that:

(i) Your name may be used in a courtesy credit on the Album liners used for such Records, in the same position as the credits accorded to other sidemen and in type identical in size, prominence and all other respects; and

(ii) Except as expressly provided in section 13.03(d)(i) above, neither your name nor any picture, portrait or likeness of you may be used in connection with such Recordings, including, without limitation, on the front covers of Album containers, on sleeves or labels used for single Records, or in videos, advertising, publicity or any other form of promotion or exploitation, without Company's express written consent, which Company may withhold in Company's unrestricted discretion. You shall furnish Company with a fully-executed copy of each such agreement promptly after the execution thereof.

(e) Before you accept the sideman engagement you shall notify Company of the name of the Person for whom the Recordings are being made and the Record company which shall have the right to distribute the Records. Your notice shall be addressed to Company's Vice-President, Business & Legal Affairs. If Company so specifies in a notice to you within ten days after Company receives your notice, you shall not accept the sideman engagement unless you first furnish Company with an agreement by that Person, that Record company, or any other Record company affiliated with it, as specified by Company in Company's notice to you, to permit Company to make similar uses of the services of recording artists of comparable stature under contract to that Person or Record company upon Company's request in the future.

13.04. Notwithstanding anything to the contrary expressed or implied herein, you may serve as a producer for the purpose of making Records for others, provided: (a) You have then fulfilled all of your obligations under this Agreement, and the engagement does not interfere with the continuing prompt performance of your obligations to Company; (b) You shall not produce Recordings of any material which you have previously recorded for Company; (c) You shall not accept the producing engagement unless the Person for whom the Recordings are being produced agrees in writing, for Company's benefit, that: (A) Your name may be used in credits on Record labels and the reverse sides of Record packages, comparable in size and prominence to the credits generally accorded to Record producers, and in advertising and publicity in a manner accurately descriptive of your producing function, and (B) Except as expressly provided in section 13.04(c)(1) above, neither your name nor any picture, portrait or likeness of you shall be used in connection with such Recordings, including, without limitation, on the front of any Record package or in advertising, publicity or any other form of promotion or exploitation, without Company's express written consent, which Company may withhold in Company's unrestricted discretion.

3.05. If you become aware of any unauthorized recording, manufacture, distribution, sale, or other activity by any third party contrary to the provisions of this Agreement, you shall notify Company of that unauthorized activity and shall cooperate with Company in any action or proceeding Company commences against such third party.

13.06. You acknowledge that your services are of a special, unique and extraordinary character which gives them a peculiar value, and that, in the event of a breach of any term, condition, representation, warranty, covenant or agreement contained in this Agreement, Company shall be caused irreparable injury, including loss of goodwill and harm to reputation, which cannot be adequately compensated in monetary damages. Accordingly, in the event of any such breach, actual or threatened, Company shall have, in addition to any other legal remedies, the right to injunctive or other equitable relief. (The preceding sentence shall not be construed to preclude you from opposing any application for such relief based upon contest of other facts alleged by Company in support of the application.)

13.07.(a) You shall at all times indemnify and hold harmless Company and any Licensee of Company from and against any and all claims, losses, damages, liabilities, costs and expenses, including, without limitation, legal expenses and reasonable counsel fees, arising out of any breach or alleged breach by you of any warranty or representation made by you in this Agreement or any other act or omission by you, provided the claim concerned has been settled or has resulted in a judgment against Company or Company's Licensees. Company shall notify you of any action commenced on such a claim. You may participate in the defense of any such claim through counsel of your selection at your own expense, but Company shall have the right at all times, in Company's sole discretion, to retain or resume

control of the conduct of the defense. If any claim involving such subject matter has not been resolved, or has been resolved by a judgment or other disposition which is not adverse to Company or Company's Licensees, you shall reimburse Company for 50 percent of the expenses actually incurred by Company and Company's Licensees in connection with that claim. Pending the resolution of any such claim, Company may withhold monies which would otherwise be payable to you under this Agreement in an amount consistent with such claim. If no action or other proceeding for recovery on such a claim has been commenced within eighteen months after its assertion Company shall not continue to withhold monies in connection with that particular claim under this subparagraph 13.07(a) unless Company believes, in Company's reasonable judgment, that such a proceeding may be instituted notwithstanding the passage of that time.

(b) If Company pays more than $7,500.00 in settlement of any such claim, you shall not be obligated to reimburse Company for the excess unless you have consented to the settlement, except as provided in the next sentence. If you do not consent to any settlement proposed by Company for an amount exceeding $7,500.00 you shall nevertheless be required to reimburse Company for the full amount paid unless you make bonding arrangements, satisfactory to Company in Company's reasonable discretion, to assure Company of reimbursement for all damages, liabilities, costs and expenses (including, without limitation, legal expenses and reasonable counsel fees) which Company or Company's Licensees may incur as a result of that claim.

14. DEFINITIONS:

14.01.(a) "Advance"--a prepayment of royalties. Company may recoup Advances from royalties to be paid or accrued to or on your behalf pursuant to this or any other agreement, except as provided in the last sentence of this subparagraph 14.01(a).

(b) "Any other agreement," in this paragraph, means any other agreement relating to you as a recording artist or as a producer of recordings of your own performances. Advances paid under Article 6 shall not be returnable to Company except as provided in Article 15 or elsewhere in this Agreement or in other circumstances in which Company is entitled to their return by reason of your failure to fulfill your obligations. Mechanical Royalties shall not be chargeable in recoupment of any Advances except those which are expressly recoupable from all monies payable under this Agreement.

(c) 50 percent of the aggregate amount, up to $_____ , of the production and acquisition costs incurred in connection with any audiovisual work embodying your performances (*i.e.*, up to $_____ per audiovisual work), under subparagraph 5.01(b), shall not be recoupable from your royalties on sales of Records other than Audiovisual Records ("audio royalties"). If any such costs are recouped from audio royalties and additional royalties accrue under paragraph 9.07 subsequently, the latter royalties shall be applied in recoupment of those costs and the amount of those audio royalties which were previously applied against those costs shall be credited back to your account.

14.02.(a) "Album"--one (1) or more audio-only Records, at least forty minutes in playing time, and embodying at least eight Sides of different Compositions sold in a single package.

(b) "Single"--a vinyl audio-only Record not more than 7 inches in diameter, or the equivalent in non-vinyl configurations but is not a Digital Side.

(c) "Twelve-inch Single"--an audio-only Record which contains not more than 3 Sides of different Compositions but is not a Digital Side.

(d) "Extended Play Record" or "EP"--an audio-only Record which contains 4 or more Sides of different Compositions but does not constitute an Album.

(e) "Audiovisual Record"--any Record which embodies, reproduces, transmits or otherwise communicates visual images whether or not the interaction of a consumer is possible or necessary for the visual images to be utilized or viewed.

14.03. "Ancillary Exploitation"--(a) the leasing of commercial advertising space to Persons other than Company, Company's distributor or their Licensees on an Artist Site or in the packaging of Phonograph Records; (b) the placement on an Artist Site of links to so-called "e-commerce" websites owned or controlled by Persons other than Company, Company's distributor or their Licensees; (c) the inclusion on Phonograph Records of web browsers, software applications, utilities or website links of Persons other than Company, Company's distributor or their Licensees; and (d) Merchandise Uses.

14.04. "Books and Records"--that portion of Company's books and records which specifically report sales of Records embodying the Masters produced hereunder and/or specifically report Net Receipts received by Company from any other commercial exploitation of such Masters for which a royalty is payable to you hereunder; provided that the term "Books and Records" shall not be deemed to include any manufacturing records (*e.g.*, inventory and/or production records) or any other of Company's records. Upon your written request in connection with any permitted audit hereunder, "Books and Records" shall also be deemed to include Company's so-called "perpetual inventory" records (as such term is currently understood in the record industry) for Phonograph Records hereunder reflecting units manufactured, units shipped, returned units, current inventory, and any adjustments thereto.

14.05. "Budget Record"--a Record, whether or not previously released, bearing a Royalty Base Price more than 33.33 percent lower than the Royalty Base Price applicable to the Top Line Records in the same configuration (*e.g.*, whether it is a tape cassette, compact disc, or vinyl Record and whether it is an Album, Single or Audiovisual Record) released by Company or Company's Licensees in the country concerned.

14.06. "Club Operation"--any direct sales to consumers through a record club (for example, sales through Columbia House in the United States or Bertelsmann Club in Europe).

14.07. "Composition"--a single musical composition, irrespective of length, including all spoken words and bridging passages and including a medley. Recordings of more than one arrangement or version of the same Composition, reproduced on the same Record, shall be considered, collectively, a recording of one Composition for all purposes under this Agreement.

14.08. "Contract Period"--the first period, or any Option Period, of the Term (as such periods may be suspended or extended as provided herein).

14.09. "Controlled Composition"--a Composition wholly or partly written, owned or controlled by you, a Producer, or any Person in which you or a Producer has a direct or indirect interest.

14.10. "Deliver" or "Delivery" or "Delivered," when used with respect to Masters--means the actual receipt by the representative of Company designated in each instance of fully mixed (in accordance with Company's then-current specifications), edited, and unequalized and

equalized Recordings (including but not limited to a final two-track equalized tape copy), satisfactory to Company for the manufacture and sale of Records, and all original and duplicate Recordings of the material recorded including each multi-track master, together with all necessary licenses, approvals, consents and permissions, and all materials required to be furnished by you to Company for use in the packaging and marketing of the Records. A Recording shall not be considered satisfactory hereunder unless: (a) it is commercially and technically satisfactory to Company for Company's manufacture and sale of Records; (b) your performance recorded in it is "first class" (as that term is understood in the record industry); (c) that performance is at least of the quality of your prior recorded performances; and (d) your performance in the Recording concerned is in the same style as your prior recorded performances and the musical material recorded in the Recording concerned is of the same genre as the musical material recorded in those prior recorded performances. An Album shall not be considered satisfactory unless the proportionate number and playing time of the Compositions in it written by you is at least substantially equivalent to the proportionate number and playing time of such Compositions in each of your previous Albums. In addition, a Record shall not be considered satisfactory if the Record includes any endorsements or so-called "commercial tie-ins" not approved by Company in writing, or if it contains any material (*e.g.*, lyrics) which Company deems patently offensive or which, in the judgment of its attorneys, might subject Company or Company's Licensees to unfavorable regulatory action, violate any law, infringe the rights of any Person, or subject Company or Company's Licensees to liability for any reason. In lieu of the physical delivery to Company's designated representative of all of the original and duplicate Masters concerned, you may provide written notice ("Notice of Control or Possession") to Company's designated representative in a form acceptable to Company which, to Company's satisfaction, enables Company at Company's discretion to control and/or to take possession of the original and duplicate Masters concerned at the recording studios or other facilities at which such Masters are maintained. Each Master Recording shall be clearly marked to identify you as the recording artist, and to show the authors, title(s) and publishers of the Composition(s) and recording date(s). You shall Deliver to Company as part of your Delivery obligations hereunder a track-by-track list ("Personnel List") of all featured vocal performers, background vocal performers and instrumental performers on each Master Recording identifying their performances. Company's payment of any monies due in respect of the Delivery of Masters hereunder, and any assistance or cooperation by Company in obtaining any necessary licenses, approvals, consents or permissions, shall not be deemed to be a waiver of your obligation to obtain and furnish clearly marked Masters as aforesaid, the Personnel List and all necessary licenses, approvals, consents and permissions and shall not be deemed to be a waiver of your Delivery obligations or representations and warranties hereunder. For purposes of calculating the Term and any other time periods tied to Delivery of Masters hereunder, only, and notwithstanding anything expressed or implied elsewhere herein, completion of Delivery shall be deemed to have occurred upon the last day of the month in which Company receives notice from you ("Notice of Delivery"), in the form attached hereto as Exhibit C, or in a similar form acceptable to Company, accurately confirming that you have Delivered all of the Masters concerned and fulfilled all of your obligations with respect thereto.

14.11. "Digital Side"--an audio-only Record consisting of a Side that is digitally transmitted, *e.g.*, a DPD.

14.12. "Gross Receipts"--means all monies (including non-returnable advances) actually earned and received by Company in the United States, directly from the applicable exploitation of the Recordings and/or Videos concerned or directly from the applicable Ancillary Exploitation concerned. (For the purposes of determining Gross Receipts, any royalties credited to Company's account but charged in recoupment of a prior advance made

to Company and retained by the payor by reason of that charge shall be deemed paid to Company and received by Company when Company receives the accounting reflecting the credit and charge concerned.) If any monies included in Gross Receipts are attributable to a Master Recording and/or a Video hereunder and to other Recordings, or partially to an Ancillary Exploitation, the amount of that item to be included in Gross Receipts hereunder shall be reasonably apportioned. If a use of a Recording and/or a Video and/or Ancillary Exploitation on which a Net Receipts Royalty is payable hereunder is made by another division or component of _____ , or by a joint venture as to which _____ is a party, Company's discretion in negotiating the amount of the compensation (if any) to be paid or credited to Company for that use and included in Gross Receipts shall be conclusive, provided that amount is fair and reasonable under the circumstances. (The preceding sentence shall apply whether or not the user derives revenues from the use, and the user's revenues shall not be deemed Gross Receipts.) Any such amount shall be deemed fair and reasonable if it is comparable to compensation then being negotiated by Company with unaffiliated users for comparable uses, or if Company notifies you that it proposes to agree to the amount concerned and you do not notify Company of your objection within five business days. If you make any such objection you shall also notify Company of your reasons therefor and shall negotiate with Company in good faith to resolve the difference underlying such objection if Company so requests. Notwithstanding the foregoing, or anything to the contrary expressed or implied elsewhere herein, with respect to receipts payable from a Club Operation, Gross Receipts shall specifically not include any profits received by Company or any Licensee as a joint venture partner. Gross Receipts shall specifically not include: (a) any payments received by Company, Company's distributor or their Licensees pursuant to any statute or other legislation (including, without limitation, payments for the public performance of Recordings, or royalties payable for the sale of blank recording media or for the sale of recording equipment) or (b) any payments received by Company, Company's distributor or their Licensees from any so-called "blanket licenses" (including, without limitation, performance licenses) or sponsorship between Company, Company's distributor and a Licensees or other Person under which the Licensee or other Person is granted access to all or a significant portion of Company's catalogue of Recordings, websites or other intellectual property.

14.13. "Inception of Recording"--the first recording of performances or other sounds with a view to the eventual fixation of a Master Recording. Masters "from the Inception of Recording" include, without limitation, all rehearsal recordings, "outtakes," and other preliminary or alternate versions of sound Recordings which are created during the production of Masters hereunder.

14.14. "Initial Release in the United States"--the last day of the month during which the "in-store" date (as that term is currently understood in the United States recording industry) for the primary configuration of the Album or other Record concerned occurs.

14.15. "Joint Recording"--any Master Recording embodying your performance together with the performance by another artist or artists with respect to whom Company is obligated to pay royalties. The amounts applicable to any Joint Recording which are payable by you or chargeable against your royalties shall be computed by apportionment as provided in paragraph 10.01.

14.16. "Licensees"--a licensee of rights from Company, including, without limitation, any wholly or partly owned subsidiaries, affiliates and other divisions and components of Company or any future distributor of Records released by Company.

14.17. "Master Recording"--as defined in paragraph 7.01 above.

14.18. "Mechanical Royalties"--royalties payable to any Person for the right to reproduce and distribute copyrighted Compositions on Records other than Audiovisual Records.

14.19. "Mid-price Record"--a Record, whether or not previously released, bearing a Royalty Base Price at least 15 percent, but not more than 33.33 percent, lower than the Royalty Base Price applicable to the Top Line Records (defined in paragraph 14.34 below) in the same configuration.

14.20. "Multiple Record Set"--two or more Records packaged and/or marketed as a single unit.

14.21. "Net Receipts"--means Gross Receipts, after deduction by Company of all direct expenses (including without limitation advertising sales commissions or fees (or an equivalent amount retained by Company if Company or its Licensees undertakes to perform the functions of an advertising agency)), taxes, and adjustments incurred in connection with the production of the Recording and/or Video concerned or the Ancillary Exploitation concerned, the acquisition of rights in them, the applicable exploitation of the Recording and/or Video and/or Ancillary Exploitation concerned, and/or in connection with the collection and receipt of those Gross Receipts in the United States (including, without limitation, all copyright payments, all re-use payments under Company's agreements with the American Federation of Musicians and any other third-party payments). For purposes of section 9.07(b)(i) above and for purposes of Ancillary Exploitations, Net Receipts shall be determined after deducting the foregoing as well as after deducting a marketing and distribution fee equal to 25 percent of the applicable Gross Receipts. If any item deducted from Gross Receipts in determining Net Receipts is attributable to a Master Recording and/or a Video hereunder and to other Recordings or partially to an Ancillary Exploitation, the amount of that item to be deducted in determining Net Receipts hereunder shall be determined by reasonable apportionment

14.22. "Net Sales"--100 percent of gross sales, less returns, credits, and reserves against anticipated returns and credits, except that solely with respect to the calculation of Mechanical Royalties under Article 12, "Net Sales" shall mean 85 percent of gross sales, less returns, credits, and reserves against anticipated returns and credits. Returns shall be apportioned between Records sold and "free goods" in the same ratio in which Company's customer's account is credited.

14.23. "Person"--any natural person, legal entity, or other organized group of persons or entities. (All pronouns, whether personal or impersonal, which refer to Persons include natural persons and other Persons.)

14.24. "Recording"--every recording of sound, whether or not coupled with a visual image, by any method and on any substance or material, or in any other form or format, whether now or hereafter known, which is used or useful in the recording, production, manufacture, distribution and/or transmission of Records or for any other commercial exploitation.

14.25. "Recording Costs"--all amounts paid or incurred in connection with the production of Masters or Records hereunder. Recording Costs include, without limitation, all union scale payments required to be made to you in connection with Masters hereunder, all costs of instrumental, vocal and other personnel specifically approved by Company for the recording of such Recordings, travel, rehearsal, and equipment rental expenses, per diems, advances to producers, studio and engineering charges in connection with Company's facilities and personnel or otherwise, all other amounts required to be paid by Company pursuant to any

applicable law or any collective bargaining agreement between Company and any union representing Persons who render services in connection with such Recordings, and all costs of mastering, remastering, and remixing. Recording Costs do not include the costs of producing metal parts, but include all studio and engineering charges or other costs incurred in preparing Masters for the production of metal parts and in preparing Masters for a final production Master. (Metal parts include lacquer, copper, and other equivalent masters.) Payments to the AFM Special Payments Fund and the Music Performance Trust Fund based upon record sales (so-called "per-record royalties") shall not be recoupable from your royalties or reimbursable by you.

14.26. "Record(s)"--all forms of reproductions, transmissions or communications of Recordings now or hereafter known, manufactured, distributed, transmitted or communicated primarily for home use, personal use, school use, jukebox use or use in means of transportation, including, without limitation, Records embodying or reproducing sound alone and Audiovisual Records. A "Phonograph Record" is a Record as embodied by the manufacturer and/or distributor in a physical, non-interactive Record configuration (*e.g.*, vinyl LP's, compact discs, videocassettes) prior to its distribution to the consumer, as opposed to the transmission or communication of a Record to the consumer prior to being embodied in a physical Record configuration, whether or not it may at some point be embodied in a physical Record configuration, by the consumer or under the consumer's direction or control.

14.27. "Royalty Base Price"--the applicable amount set forth in this paragraph 14.27 for the Record concerned less all excise, sales and similar taxes included in the price, if any:

(a) The net wholesale price received by Company (*i.e.*, net of any allowances, rebates and/or other discounts, whether expressed in the published price to dealers or otherwise) for the Record concerned in the configuration concerned from time to time during the accounting period in which the sale occurs.

(b) Notwithstanding anything to the contrary in subparagraph 14.27(a) above: (i) for any Record sold directly to consumers, by Company in the United States or Canada, or in any country outside the United States and Canada by Company's principal Licensee in the country concerned, via direct mail, through mail order operations or via any other means of transmission or communication, the Royalty Base Price shall be one-half (1/2) of the price (less actual shipping and handling costs and referral fees, if any, included in the price) paid by the consumer to Company or Company's Licensee, as applicable, for the Record concerned; provided, however, that if the Record concerned is transmitted or communicated by Company or Company's Licensees together with other Records, then the Royalty Base Price for such Record shall be determined by Company based on a reasonable apportionment of one-half (1/2) of the price (less a reasonable apportionment of actual shipping and handling costs and referral fees, if any, included in the price) paid by the consumer to Company or Company's Licensee; (ii) for any Record sold through a Club Operation outside of the United States, the Royalty Base Price shall be the same as that for the identical Records sold Through Normal Retail Channels in the country concerned; and (iii) for any Record created on a custom basis (including, without limitation, Records sold for use as premiums or in connection with the sale, advertising, or promotion of any other product or service), the Royalty Base Price shall be the actual sales price received by Company, less any shipping and handling fees included in such price.

14.28. "Side"--a Recording of a continuous performance of a particular arrangement or version of a Composition, not less than two and one-quarter (2 1/4) minutes in playing time. If any Album (or other group of Masters) Delivered to Company in fulfillment of a

Recording Commitment expressed as a number of Sides includes Masters of more than one arrangement or version of any Composition, all of those Recordings shall be deemed to constitute one Side.

14.29. "Special Packaging Costs"--costs paid or incurred by Company in creating and producing Record covers, sleeves, and other packaging elements or in developing, hosting and maintaining websites (including you Site), in excess of the following amounts: (a) $10,000 per Record for design of artwork (including expenses for reproduction rights) and for separations; (b) for Records manufactured for distribution anywhere in the Territory, packaging manufacturing costs equal to those necessary to manufacture the following packaging elements in the applicable territory: (i) for vinyl LP's, a four-color jacket and a one-color inner sleeve; (ii) for cassettes including digital compact cassettes, a six-panel inlay card with a four-color front panel and black and white other panels, and a standard color Norelco box; and (iii) for compact discs and any other configurations not described above, an eight-page (*i.e.*, eight faces) booklet with four-color front and back pages and black and white other pages, and a standard color jewel box. ("Color" in the preceding sentence means those colors for which Company is charged a standard fee.) The packaging elements referred to in sections (b)(i), (ii), and (iii) above are deemed for purposes of this paragraph 14.29 to be on standard weight paper or cardboard; and (c) $7,500 for website development, hosting and maintenance.

14.30. "Territory"--the universe.

14.31. "Through Normal Retail Channels"--refers to sales distribution by Company other than of Records or sales described in paragraphs 9.03, 9.04, 9.05, 9.07, 9.08 and 10.03 for which royalties are payable pursuant to the paragraph concerned.

14.32. "Top Line" Record--a Record bearing the same Gross Royalty Base as the majority (or plurality) of the new Record releases in the same configuration of Company's best-selling artists.

14.33. "Video"--an audiovisual work owned or controlled by Company featuring, primarily, the audio soundtrack of one (1) or more Masters hereunder.

15. REMEDIES:

15.01. If you do not fulfill any portion of your Recording Commitment within ninety days after the end of the time prescribed in Article 3, or any of your other material obligations under this Agreement for any reason, Company shall have the following options: (a) to suspend Company's obligations to make payments to you under this Agreement until you have cured the default; (b) to terminate the Term at any time, whether or not you have commenced curing the default before such termination occurs; and (c) to require you to repay to Company the amount, not then recouped, of any Advance previously paid to you by Company and not specifically attributable under Article 6 to an Album which has actually been fully Delivered, except as expressly provided in the next sentence. You shall not be required to repay any such Advance to the extent to which you furnish Company with documentation satisfactory to Company establishing that you have actually used the Advance to make payments to Persons not affiliated with you and in which neither you nor any such Person has any interest, for recording costs incurred in connection with the Album concerned before Company's demand for repayment. ("recording costs," in the preceding sentence, means items which would constitute Recording Costs if paid or incurred by Company.) Company may exercise each of those options by sending you the appropriate notice. Company shall not exercise Company's rights under subparagraph 15.01(a) or (c) if

the default concerned is attributable solely to the death or permanent disability of you. No exercise of an option under this paragraph shall limit Company's rights to recover damages by reason of your default, Company's rights to exercise any other option under this paragraph, or any of Company's other rights or remedies.

15.02. If Company refuses without cause to allow you to fulfill your Recording Commitment for any Contract Period and if, not later than sixty days after that refusal takes place, you notify Company of your desire to fulfill such Recording Commitment, then Company shall permit you to fulfill said Recording Commitment by notice to you to that effect given within sixty days of Company's receipt of your notice. Should Company fail to give such notice, you shall have the option to terminate the Term by notice given to Company within thirty days after the expiration of that latter sixty-day period; on receipt by Company of such notice the Term shall terminate and all parties shall be deemed to have fulfilled all of their obligations hereunder except those obligations which survive the end of the Term (*e.g.*, warranties, re-recording restrictions and the obligation to pay royalties), at which time Company shall pay to you, in full settlement of Company's obligations to you (other than those royalty obligations) an Advance in the amount equal to:

(a) The aggregate of the minimum Recording Funds fixed in paragraph 6.01 for each Album, then remaining unrecorded, of the Recording Commitment for the Contract Period during which such termination occurs (less any amounts previously paid or incurred by Company which may or were intended to reduce any of such Recording Funds), less:

(b) The average amount of the Recording Costs for the last two Albums recorded in fulfillment of the Recording Commitment (or, if only one Album in fulfillment of the Recording Commitment has been recorded, the amount of the Recording Costs for that Album), multiplied by the number of such unrecorded Albums referred to in clause (a). If Masters sufficient to constitute at least one full Album (*i.e.*, the first Album to be recorded under this Agreement) have not been completed, then the amount of the Advance payable to you under the preceding sentence shall be the amount equal to your minimum union scale compensation for the unfulfilled portion of the Recording Commitment for that Contract Period. If Company does not directly pay or incur Recording Costs for any Recording hereunder, then an amount equal to no less than 85 percent of the Recording Fund therefor, and of any other amount paid by Company to you with respect thereto, shall be treated as Recording Costs for the purposes of this paragraph 15.02. If you fail to give Company either notice within the period specified therefor, Company shall be under no obligation to you for failing to permit you to fulfill such Recording Commitment.

15.03. If because of any of the following events (any such event, a "Force Majeure Event"): act of God; inevitable accident; fire; lockout, strike or other labor dispute; riot or civil commotion; act of public enemy; enactment, rule, order or act of any government or governmental instrumentality (whether federal, state, local or foreign); failure of technical facilities; failure or delay of transportation facilities; illness or incapacity of any performer or producer; or other cause of a similar or different nature not reasonably within Company's control; Company is materially hampered in the recording, manufacture, distribution or sale of Records, then, without limiting Company's rights, Company shall have the option (a "Suspension Option") by giving you notice to suspend the running of the then current Contract Period as well as any of Company's obligations hereunder for the duration of any such contingency plus such additional time as is necessary so that Company shall have no less than thirty days after the cessation of such contingency in which to exercise Company's option, if any, to extend the Term for the next Option Period. Notwithstanding the preceding sentence, if Company is reasonably unable to provide you with notice that it intends to exercise the Suspension Option hereunder, such Suspension Option will be deemed to have

been exercised as of the first day of the Force Majeure Event giving rise to such option. If any suspension imposed under this paragraph by reason of an event affecting no Record manufacturer or distributor except Company continues for more than six months, you may request that Company, by notice, terminate the suspension by notice given to you within sixty days after Company's receipt of your notice. If Company does not do so, the Term shall terminate at the end of that sixty-day period (or at such earlier time as Company may designate by notice to you), and all parties shall be deemed to have fulfilled all of their obligations under this Agreement except those obligations which survive the end of the Term (such as warranties, re-recording restrictions, and the obligation to pay royalties).

16. AGREEMENTS, APPROVAL & CONSENT:

16.01. As to all matters treated herein to be determined by mutual agreement, or as to which any approval or consent is required, such agreement, approval or consent shall not be unreasonably withheld (except as otherwise expressly provided in this Agreement).

16.02. Your agreement, approval or consent, or that of you, whenever required (including, without limitation, written agreement, approval or consent), shall be deemed to have been given unless you notify Company otherwise within ten business days following the date of Company's written request to you therefor.

17. NOTICES:

Except as otherwise specifically provided herein, all notices under this Agreement shall be in writing and shall be given by courier or other personal delivery or by certified mail at the appropriate address below or at a substitute address designated by notice by the party concerned.

To You: The address shown above.

To Company:

Each notice to Company shall be addressed for the attention of Company's Chief Executive Officer. Copies of each notice sent to Company shall be simultaneously sent to the Vice President, Business & Legal Affairs. _____[*Add the following if a courtesy copy is requested for Artist's attorney:* Company shall undertake to send a copy of each notice sent to you to Alan H. Kress, Esq., 60 East 42nd Street, Suite 1638, New York, NY 10165, but Company's failure to send any such copy will not constitute a breach of this Agreement or impair the effectiveness of the notice concerned.] Notices shall be deemed given when mailed or, if personally delivered, when so delivered, except that a notice of change of address shall be effective only from the date of its receipt.

18. MISCELLANEOUS:

18.01. You shall, prior to the release of the first Album hereunder, prepare an act of professional quality and shall, during the Term, actively pursue your career as an entertainer in the live engagement field.

18.02. Company shall have the right, throughout the Term, to obtain or increase insurance on the life of you in such amounts as Company determines, in Company's name and for Company's sole benefit or otherwise, in Company's discretion. You shall cooperate in

physical examinations without expense to you, supply information, and sign documents, and otherwise cooperate fully with Company, as Company may request in connection with any such insurance. You and you warrant and represent that, to your best knowledge, you is in good health and does not suffer from any medical condition which might interfere with the timely performance of your obligations under this Agreement. You shall not be deemed in breach of this Agreement by reason of Company's inability to obtain any such insurance, unless it results from failure by you to comply with your obligations under this paragraph.

18.03. The parties hereto agree that: (a) all understandings and agreements heretofore made between them with respect to the subject matter hereof are merged in this Agreement, which fully and completely expresses their agreement with respect to the subject matter hereof and (b) except as specifically set forth herein, all prior agreements among the parties with respect to such subject matter are superseded by this Agreement which integrates all promises, agreements, conditions and understandings among the parties with respect to such subject matter. In addition, you acknowledge that neither Company nor any person acting on behalf of Company (including its agents, its representatives or its attorneys) has made any promise, representation or warranty whatsoever, express or implied, oral or written, not contained herein, and you further acknowledge that you have not executed, and have not been induced to execute, this Agreement in reliance upon any promise, representation or warranty. No change, modification, waiver or termination of this Agreement shall be binding upon Company unless it is made by an instrument signed by an authorized officer of Company. No change of this Agreement shall be binding upon you unless it is made by an instrument signed by you. A waiver by either party of any provision of this Agreement in any instance shall not be deemed a waiver of such provision, or any other provision hereof, as to any future instance or occurrence. All remedies, rights, undertakings, and obligations contained in this Agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, undertaking, or obligation of either party. The captions of the Articles in this Agreement are included for convenience only and shall not affect the interpretation of any provision.

18.04. Those provisions of any applicable collective bargaining agreement between Company and any labor organization which are required, by the terms of such agreement, to be included in this Agreement shall be deemed incorporated herein.

18.05.(a) Company may assign Company's rights under this Agreement in whole or in part to any subsidiary, affiliated or controlling corporation, to any Person owning or acquiring a substantial portion of the stock or assets of Company, or to any partnership or other venture in which Company participates, and such rights may be similarly assigned by any assignee. No such assignment shall relieve Company of any of Company's obligations hereunder. Company may also assign Company's rights to any of Company's Licensees if advisable in Company's sole discretion to implement the license granted. You shall not have the right to assign this Agreement or any of your rights hereunder without Company's prior written consent. Any purported assignment by you in violation of this paragraph shall be void.

(b) Notwithstanding anything to the contrary in paragraph 1.02 or otherwise and without limiting the generality of the foregoing, if Company does not exercise its option under section 1.02(b)(ii) prior to the last day of the Extension Period, you will promptly notify Company of the same and Company shall have the right to exercise the applicable Contract Period Option, by sending a notice to you not later than the date ten business days after the last day of the Extension Period. Each such notice shall be in writing and shall be sent by courier or other personal delivery or be or certified mail to the attention of Company's Vice

President Business& Legal Affairs.

18.06. If any part of this Agreement, or the application thereof to any party, shall be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect the remainder of this Agreement, which shall continue in full force and effect, or the application of this Agreement to the remaining parties.

18.07. Neither party shall be entitled to recover damages or to terminate the Term by reason of any breach by the other party of its material obligations, unless the latter party has failed to remedy the breach within a reasonable time following receipt of notice thereof. (The preceding sentence shall not apply to any termination by Company under subparagraph 15.01(b) or to any recovery to which Company may be entitled by reason of your failure to fulfill your Recording Commitment hereunder.) Notwithstanding the foregoing, you shall not be entitled to terminate the Term in connection with any claim that additional monies are payable to you hereunder, unless: (i) such claim is reduced to a final, non-appealable judgment by a court of competent jurisdiction and the failure to pay such monies is determined to constitute a material breach and (ii) Company fails to pay you the amount thereof within thirty days after Company receives notice of the entry of such judgment.

18.08. THIS AGREEMENT HAS BEEN ENTERED INTO IN THE STATE OF _____[*name of state*], AND THE VALIDITY, INTERPRETATION AND LEGAL EFFECT OF THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF _____[*name of state*] APPLICABLE TO CONTRACTS ENTERED INTO AND PERFORMED ENTIRELY WITHIN THE STATE OF _____[*name of state*] (WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW PRINCIPLES UNDER _____[*name of state*] LAW). THE _____[*name of state*] COURTS (STATE AND FEDERAL), SHALL HAVE SOLE JURISDICTION OF ANY CONTROVERSIES REGARDING THIS AGREEMENT; ANY ACTION OR OTHER PROCEEDING WHICH INVOLVES SUCH A CONTROVERSY SHALL BE BROUGHT IN THOSE COURTS IN _____[*name of country*] COUNTY AND NOT ELSEWHERE. THE PARTIES WAIVE ANY AND ALL OBJECTIONS TO VENUE IN THOSE COURTS AND HEREBY SUBMIT TO THE JURISDICTION OF THOSE COURTS. ANY PROCESS IN ANY SUCH ACTION OR PROCEEDING MAY, AMONG OTHER METHODS, BE SERVED UPON YOU BY DELIVERING IT OR MAILING IT, BY REGISTERED OR CERTIFIED MAIL, DIRECTED TO THE ADDRESS FIRST ABOVE WRITTEN OR SUCH OTHER ADDRESS AS YOU MAY DESIGNATE PURSUANT TO ARTICLE 17. ANY SUCH PROCESS MAY, AMONG OTHER METHODS, BE SERVED UPON THE ARTIST OR ANY OTHER PERSON WHO APPROVES, RATIFIES, OR ASSENTS TO THIS AGREEMENT TO INDUCE COMPANY TO ENTER INTO IT, BY DELIVERING THE PROCESS OR MAILING IT BY REGISTERED OR CERTIFIED MAIL, DIRECTED TO THE ADDRESS FIRST ABOVE WRITTEN OR SUCH OTHER ADDRESS AS THE ARTIST OR THE OTHER PERSON CONCERNED MAY DESIGNATE IN THE MANNER DESCRIBED IN ARTICLE 17. ANY SUCH DELIVERY OR MAIL SERVICE SHALL BE DEEMED TO HAVE THE SAME FORCE AND EFFECT AS PERSONAL SERVICE WITHIN THE STATE OF _____[*name of state*].

18.09. In entering into this Agreement, and in providing services pursuant hereto, you and you have and shall have the status of independent contractors. Nothing herein contained shall contemplate or constitute you as Company's agent or employee, and nothing herein shall constitute a partnership, joint venture or fiduciary relationship between you and Company.

18.10. This Agreement shall not become effective until executed by all proposed parties hereto.

Sincerely,

_____ Records

By: _____

Agreed and Accepted:
_____
By: _____
An Authorized Signatory

My taxpayer identification number (social security number or employer identification number) is _____ -_____ -_____ . Under the penalties of perjury, I certify that this information is true, correct, and complete.

SCHEDULE A

(Appended in accordance with paragraph 11.06 above)

Internal Revenue Service Form

[See attached]

SCHEDULE B

(Appended in accordance with subparagraph 12.03(a) above)

TO:

ATT: COPYRIGHT DEPARTMENT

A. TITLE: WRITERS:

B. PUBLISHER(S) AND PAYMENT PERCENTAGE:

C. RECORD(S) NO.:
ARTIST:

ROYALTY RATE: STATUTORY

THE AUTHORITY HEREUNDER IS LIMITED TO THE MANUFACTURE AND DISTRIBUTION OF PHONORECORDS SOLELY IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND NOT ELSEWHERE.

DATE OF RELEASE:

You have advised us [*add, if appropriate:*, in our capacity as Agent for the Publisher(s) referred to in (B) above,] that you wish to obtain a compulsory license to make and to distribute phonorecords of the copyrighted work referred to in (A) above, under the compulsory license provision of Section 115 of the Copyright Act.

Upon your doing so, you shall have all the rights which are granted to, and all the obligations which are imposed upon, users of said copyrighted work under the compulsory license provision of the Copyright Act, after phonorecords of the copyrighted work have been distributed to the public in the United States under the authority of the copyright owner by another person, except that with respect to phonorecords thereof made and distributed hereunder:

1. You shall pay royalties and account to us [as Agent for and on behalf of said Publisher(s)] quarterly, within 45 days after the end of each calendar quarter, on the basis of records made and distributed;

2. For such records made and distributed, the royalty shall be the statutory rate in effect at the time the record is made, except as otherwise stated in (C) above;

3. This compulsory license covers and is limited to one (1) particular recording of said copyrighted work as performed by the artist and on the record number identified in (C) above; and this compulsory license does not supersede nor in any way affect any prior agreements now in effect respecting phonorecords of said copyrighted work;

4. If you fail to account to us and pay royalties as herein provided for, said Publisher(s) or his Agent may give written notice to you that, unless the default is remedied within thirty days from the date of the notice, this compulsory license shall be automatically terminated. Such termination shall render either the making or the distribution, or both, of all phonorecords for which royalties have not been paid, actionable as acts of infringement under, and fully subject to the remedies provided by the Copyright Act;

5. You need not serve or file the notice of intention to obtain a compulsory license required by the Copyright Act.

SCHEDULE C

(Appended in accordance with paragraph 14.10 above)

Notice Of Delivery

Date _____

To:

Attn: Vice President, Administration

This letter will serve to confirm that on _____[*date*], I / we physically delivered to _____[*name of recipient*] at _____[*address*] all items set forth in paragraph 14.10 of my / our recording agreement with you, dated _____[*date*], with respect to the [first, second, etc.] [Album] of [my] // [our] Recording Commitment.

[*OR*]

This letter will serve to confirm that on _____[*date*], I / we have provided _____[*name of recipient*] at _____[*address*] with Notice of Control or Possession, as described in paragraph 14.10 of my // our recording agreement with you dated _____[*date*], with respect to the [first, second, etc.] [Album] of [my] // [our] Recording Commitment.

Very truly yours,
_____

EXHIBIT B

BASIC BRAND EQUITY AGREEMENT

Attached to and made part of a Exclusive Recording Agreement (Short Form) between Company and
_____ **dated as of** _____[*date*].

Basic Brand Equity Agreement made as of _____[*date*] ("Participation Agreement"), between _____ with an address at _____ ("you") and _____ ("Company").

Reference is made to the exclusive recording agreement (the "Recording Agreement") between you and Company dated as of _____[*date*] regarding your recording services, as such agreement may from time to time be amended, supplemented, or otherwise modified. Capitalized terms defined in the Recording Agreement and used herein shall have the meanings given to such terms in the Recording Agreement, unless otherwise specified herein.

1. PARTICIPATION TERM

1.01. The term of this Participation Agreement (the "Participation Term") shall begin on the date set forth above and shall continue for the term of the Recording Agreement (as may be amended and extended).

1.02. For the avoidance of doubt, Company shall not be entitled to exercise any Participation Period Option unless Company has also exercised its Contract Period Option to extend the Term of the Recording Agreement for an additional Contract Period.

2. FEES

2.01. Promptly following the complete execution of this Agreement, Company shall pay you an Advance in the amount of $_____ in connection with the first Participation Period.

2.02. Promptly following Company's exercise of each Participation Period Option (if any) hereunder, Company shall pay you an Advance of $_____ .

The fees prescribed in paragraph 2.01 and this paragraph 2.02 are collectively referred to as the "Fees."

2.03. You hereby authorize and direct Company to withhold from any Fees due you from Company any portion thereof required to be withheld by the United States Internal Revenue Service and/or any other governmental authority, and to pay same to the United States Internal Revenue Service and/or such other authority. No Fees shall be paid pursuant to this Agreement until you have completed the Internal Revenue Service Form W-4 attached hereto as Schedule A.

3. PARTICIPATION PAYMENTS

3.01.(a) In full consideration of the Fees prescribed in Article 2 above, you will pay, and you will cause any and all Third Parties (as defined in subparagraph 3.01(b) below) to pay, to Company 50 percent of any and all gross monies ("Participation Payment") (including, without limitation, royalties, advances, revenues, and fees) otherwise payable to you or any Person affiliated with you or receiving monies on behalf of you (individually and collectively, the "Artist Parties"), anywhere in the world during the Participation Term, or pursuant to any agreements, commitments, or engagements entered into or secured during the Participation Term, solely in connection with the following (collectively, the "Covered Revenues"): (i) services (other than those services included within the exclusive services granted to Company under the Recording Agreement) rendered by you as actor or performer in any and all media now known or hereafter devised, including, without limitation, film, television, live theater, and internet (whether pre-recorded or for live broadcast or transmission, whether free or pay, and whether for public performance or home use such as on home video devices); (ii) the use of your name, your likeness and/or logos on merchandise of any kind (other than records and merchandise incorporating materials owned and/or controlled by Company or its Licensees); (iii) endorsements, sponsorships and strategic partnerships; (iv) live performance engagements; (v) non-fiction books, magazines and other non-fiction publishing materials; (vi) fan clubs; (vii) games, including without limitation, video games (other than video games created by Company) and (viii) music publishing. Notwithstanding anything to the contrary in the preceding sentence, the following shall be excluded from monies that are subject to Company's participation under this paragraph: (A) actual commissions charged to any of you Parties (including without limitation, your managers, agents and advisors other than you Parties) solely in connection with any of the Covered Revenues, provided that the aggregate amount of such deductions to be applied to Covered Revenues in any instance shall not exceed 30 percent of the Covered Revenues concerned; (B) legitimate, direct, actual, third-party, out-of-pocket costs incurred by you to generate the Covered Revenues concerned (*e.g.*, lighting or buses for a tour); and (C) revenue derived from Covered Revenues described in clauses (ii) and (iv) above (collectively, "Tour and Merchandising Revenues") until the date when you have not sustained a cumulative loss on commercial live performance engagements for any period of 3 consecutive months while there is a touring activity. The foregoing shall not apply to Tour and Merchandising Revenues derived specifically from retail merchandise, which shall constitute Covered Revenues from the commencement of the Participation Term. For the avoidance of doubt, the Participation Payment shall be calculated only once with respect to revenues derived from any particular exploitation. By way of example, if in connection with a particular Covered Revenue in any instance, $100 is generated, Company's portion would be calculated only once with reference to that gross amount and

not also with reference to any portion of that gross amount payable to any third party. If you terminate the Term of the Recording Agreement pursuant to subparagraph 8.06(a) of the Recording Agreement by reason of Company's failure to release an Album of the Recording Commitment, then Company shall not be entitled to receive Participation Payments arising solely out of the agreements, commitments, or engagements entered into or secured solely in connection with the Covered Revenues, during the applicable Contract Period in which such Album is Delivered under the Recording Agreement. You will be required to furnish us with accounting statements explaining the calculation of the Participation Payments in reasonable detail. All payments, statements, or notices of any kind sent to us by you will be sent to us at the address given above, directed to the attention of our Vice President of Royalty Accounting, or to such other address of which we notify you in writing, and with a copy to the same address directed to the attention of our Executive Vice President, Business and Legal Affairs.

(b) You will irrevocably direct and will use reasonable efforts to cause each Person from which you or any Person receiving revenues on your behalf receives Covered Revenues ("Third Party"), to account directly to Company for Company's share of such Covered Revenues at the same times and subject to the same accounting terms as apply to accountings to you, you(s) concerned and/or the applicable Person receiving Covered Revenues on your behalf, but no less frequently than semi-annually. You shall use reasonable efforts to cause all agreements with Third Parties (each, a "Covered Revenue Agreement") to provide that Company shall have the right to examine each Third Party's books and records with respect to Covered Revenues subject to the same terms and limitations as apply to accountings to you, you(s) concerned and/or the applicable Person receiving Covered Revenues on your behalf. You will provide Company with a copy of each Covered Revenue Agreement within ten days after the execution of such agreement. Company shall have the right to examine your books and records (upon reasonable prior notice to you, at your and/or your offices where the records concerned are kept, provided, at Company's request you will make all such records available at one such office, and not more frequently than once per twelve-month period) and each Person receiving Covered Revenues on your or their behalf with respect to Company's share of Covered Revenues. If it is not practicable for you to obtain such direct accounting and audit rights for Company in any instance, you will notify Company upon conclusion of each Covered Revenue Agreement if you have not obtained such direct accounting and audit rights for Company, and you will render statements and payments to Company for Company's share of all Covered Revenue within ten days after the receipt of each statement under each Covered Revenue Agreement. Without limiting the foregoing, you will provide Company with a copy of each statement received by you under each Covered Revenue Agreement within ten days after receipt of such statement. Nothing in any Covered Revenue Agreement will relieve you of your obligation to make such payments to Company if not paid to Company by the applicable Third Party, within ten days after the rendering of each accounting which includes such Covered Revenues concerned, or within ten days after receipt by you or on your behalf of such Covered Revenues if for any reason not included in an accounting, in each instance, and you will be liable to Company for all such payments not made to Company as required by this paragraph 3.

(c) You shall maintain books and records which Company may examine at its own expense. Company may make those examinations only for the purposes of verifying the accuracy of any royalty statement relating to the Participation Payment and only once during each twelve-month period, only once for a particular accounting period, and only within three years after the date when you send Company such statement. Company may make those examinations only during your usual business hours, on reasonable written notice for a reasonably convenient time, and at the place where you keep the books and records to be

examined. Company may appoint a qualified royalty auditor to make any such examination on its behalf.

4. WARRANTIES; REPRESENTATIONS; RESTRICTIONS; INDEMNITIES

4.01. You warrant and represent that:

(a) You have the right and power to enter into and fully perform this Participation Agreement. You are and shall continuously be a limited liability company in good standing in the jurisdiction of your formation.

(b) You are or you will become and will remain, to the extent necessary to enable the performance of this Participation Agreement, a member in good standing of all labor unions or guilds, membership in which may be lawfully required for the performance of your services described in this Participation Agreement.

4.02. During the Participation Term, you shall not enter into any agreement which would interfere with the full and prompt performance of your obligations hereunder.

4.03.(a) You shall at all times indemnify and hold harmless Company and any Licensee of Company from and against any and all claims, losses, damages, liabilities, costs and expenses, including, without limitation, legal expenses and reasonable counsel fees, arising out of any breach or alleged breach by you of any warranty or representation made by you in this Participation Agreement or any other act or omission by you, provided the claim concerned has been settled or has resulted in a judgment against Company or Company's Licensees. Company shall notify you of any action commenced on such a claim. You may participate in the defense of any such claim through counsel of your selection at your own expense, but Company shall have the right at all times, in Company's sole discretion, to retain or resume control of the conduct of the defense. If any claim involving such subject matter has not been resolved, or has been resolved by a judgment or other disposition which is not adverse to Company or Company's Licensees, you shall reimburse Company for 50 percent of the expenses actually incurred by Company and Company's Licensees in connection with that claim. Pending the resolution of any such claim, Company may withhold monies which would otherwise be payable to you under this Participation Agreement in an amount consistent with such claim. If no action or other proceeding for recovery on such a claim has been commenced within twelve months after its assertion Company shall not continue to withhold monies in connection with that particular claim under this subparagraph 4.03(a) unless Company believes, in Company's reasonable judgment, that such a proceeding may be instituted notwithstanding the passage of that time.

(b) If Company pays more than $7,500.00 in settlement of any such claim, you shall not be obligated to reimburse Company for the excess unless you have consented to the settlement, except as provided in the next sentence. If you do not consent to any settlement proposed by Company for an amount exceeding $7,500.00 you shall nevertheless be required to reimburse Company for the full amount paid unless you make bonding arrangements, satisfactory to Company in Company's reasonable discretion, to assure Company of reimbursement for all damages, liabilities, costs and expenses (including, without limitation, legal expenses and reasonable counsel fees) which Company or Company's Licensees may incur as a result of that claim.

5. REMEDIES. If you do not fulfill any of your material obligations under this Participation Agreement, Company shall have the option to suspend Company's obligations to make

payments to you under this Participation Agreement until you have cured the default. Company may exercise this option by sending you the appropriate notice. Company shall not exercise Company's rights under this paragraph 5 if the default concerned is attributable solely to the death or permanent disability of you. No exercise of the option under this paragraph shall limit Company's rights to recover damages by reason of your default, Company's rights to exercise any other option under this paragraph, or any of Company's other rights or remedies.

6. MISCELLANEOUS

6.01. The parties hereto agree that: (a) all understandings and agreements heretofore made between them with respect to the subject matter hereof are merged in this Participation Agreement, which fully and completely expresses their agreement with respect to the subject matter hereof and (b) except as specifically set forth herein, all prior agreements among the parties with respect to such subject matter are superseded by this Participation Agreement which integrates all promises, agreements, conditions and understandings among the parties with respect to such subject matter. In addition, you acknowledge that neither Company nor any person acting on behalf of Company (including its agents, its representatives or its attorneys) has made any promise, representation or warranty whatsoever, express or implied, oral or written, not contained herein, and you further acknowledge that you have not executed, and have not been induced to execute, this Participation Agreement in reliance upon any promise, representation or warranty. No change, modification, waiver or termination of this Participation Agreement shall be binding upon Company unless it is made by an instrument signed by an authorized officer of Company. No change of this Participation Agreement shall be binding upon you unless it is made by an instrument signed by you. A waiver by either party of any provision of this Participation Agreement in any instance shall not be deemed a waiver of such provision, or any other provision hereof, as to any future instance or occurrence. All remedies, rights, undertakings, and obligations contained in this Participation Agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, undertaking, or obligation of either party. The captions of the Articles in this Participation Agreement are included for convenience only and shall not affect the interpretation of any provision.

6.02.(a) Company may assign Company's rights under this Participation Agreement in whole or in part to any subsidiary, affiliated or controlling corporation, to any Person owning or acquiring a substantial portion of the stock or assets of Company, or to any partnership or other venture in which Company participates, and such rights may be similarly assigned by any assignee. No such assignment shall relieve Company of any of Company's obligations hereunder. Company may also assign Company's rights to any of Company's Licensees if advisable in Company's sole discretion to implement the license granted. You shall not have the right to assign this Participation Agreement or any of your rights hereunder without Company's prior written consent. Any purported assignment by you in violation of this paragraph shall be void.

(b) Without limiting the generality of the foregoing, you acknowledge that this Agreement is subject to assignment to _____ ("_____ "), in accordance with an agreement between Company and _____ , and _____ shall have the right to exercise, implement or enforce any rights granted to Company hereunder on Company's behalf. In the event of a default by Company in performing any of its obligations under this Agreement, duplicate notice of such default will be sent to _____ , Attention: General Counsel, simultaneously with the giving of such notice to Company and _____ shall have the right to cure each default on behalf of Company.

6.03. If any part of this Participation Agreement, or the application thereof to any party, shall be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect the remainder of this Participation Agreement, which shall continue in full force and effect, or the application of this Participation Agreement to the remaining parties.

6.04. Neither party shall be entitled to recover damages or to terminate the Participation Term by reason of any breach by the other party of its material obligations, unless the latter party has failed to remedy the breach within a reasonable time following receipt of notice thereof. Notwithstanding the foregoing, you shall not be entitled to terminate the Participation Term in connection with any claim that additional monies are payable to you hereunder, unless: (i) such claim is reduced to a final, non-appealable judgment by a court of competent jurisdiction and the failure to pay such monies is determined to constitute a material breach and (ii) Company fails to pay you the amount thereof within thirty days after Company receives notice of the entry of such judgment.

6.05. THIS PARTICIPATION AGREEMENT HAS BEEN ENTERED INTO IN THE STATE OF _____[*name of state*], AND THE VALIDITY, INTERPRETATION AND LEGAL EFFECT OF THIS PARTICIPATION AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF _____[*name of state*] APPLICABLE TO CONTRACTS ENTERED INTO AND PERFORMED ENTIRELY WITHIN THE STATE OF _____[*name of state*] (WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW PRINCIPLES UNDER _____[*name of state*] LAW). THE NEW YORK COURTS (STATE AND FEDERAL), SHALL HAVE SOLE JURISDICTION OF ANY CONTROVERSIES REGARDING THIS PARTICIPATION AGREEMENT; ANY ACTION OR OTHER PROCEEDING WHICH INVOLVES SUCH A CONTROVERSY SHALL BE BROUGHT IN THOSE COURTS IN _____[*name of county*] COUNTY AND NOT ELSEWHERE. THE PARTIES WAIVE ANY AND ALL OBJECTIONS TO VENUE IN THOSE COURTS AND HEREBY SUBMIT TO THE JURISDICTION OF THOSE COURTS. ANY PROCESS IN ANY SUCH ACTION OR PROCEEDING MAY, AMONG OTHER METHODS, BE SERVED UPON YOU BY DELIVERING IT OR MAILING IT, BY REGISTERED OR CERTIFIED MAIL, DIRECTED TO THE ADDRESS FIRST ABOVE WRITTEN OR SUCH OTHER ADDRESS AS YOU MAY DESIGNATE PURSUANT TO ARTICLE 17 OF THE RECORDING AGREEMENT. ANY SUCH PROCESS MAY, AMONG OTHER METHODS, BE SERVED UPON THE ARTIST OR ANY OTHER PERSON WHO APPROVES, RATIFIES, OR ASSENTS TO THIS PARTICIPATION AGREEMENT TO INDUCE COMPANY TO ENTER INTO IT, BY DELIVERING THE PROCESS OR MAILING IT BY REGISTERED OR CERTIFIED MAIL, DIRECTED TO THE ADDRESS FIRST ABOVE WRITTEN OR SUCH OTHER ADDRESS AS THE ARTIST OR THE OTHER PERSON CONCERNED MAY DESIGNATE IN THE MANNER DESCRIBED IN ARTICLE 17 OF THE RECORDING AGREEMENT. ANY SUCH DELIVERY OR MAIL SERVICE SHALL BE DEEMED TO HAVE THE SAME FORCE AND EFFECT AS PERSONAL SERVICE WITHIN THE STATE OF _____[*name of state*].

6.06. In entering into this Participation Agreement, and in providing services pursuant hereto, you have and shall have the status of independent contractors. Nothing herein contained shall contemplate or constitute you as Company's agents or employees, and nothing herein shall constitute a partnership, joint venture or fiduciary relationship between you and Company.

6.07. This Participation Agreement shall not become effective until executed by all proposed parties hereto.

RECORD COMPANY
By: _____

By: _____

My social security number is _____ -_____ -_____ . Under the penalties of perjury, I certify that this information is true, correct, and complete.

By: _____

SCHEDULE A

(Appended in accordance with paragraph 2.03 above) Internal Revenue Service Form W-4

[*Attach IRS Form W-4*]

EXHIBIT C

CO-PUBLISHING AGREEMENT

Attached to and made part of a Exclusive Recording Agreement (Short Form) between Company and
_____ **dated as of** _____[*date*].

Co-Publishing Agreement made as of _____[*date*] ("Co-Publishing Agreement"), between _____ with an address at _____ ("you"), and _____ with an address at _____ ("Company").

1. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, you hereby irrevocably and absolutely assigns, conveys and transfers to Company's publishing designee (the "Publisher") an undivided 50 percent interest in the worldwide copyright (and all renewals and extensions thereof) and all other rights in and to each musical composition which is (a) written or composed, in whole or in part, directly or indirectly, by you, and/or (b) is owned or controlled, in whole or in part, directly or indirectly by you, or by any person or entity in which you have a direct or indirect interest (each, a "Published Composition"), prior to or during the term hereof. Publisher shall be the exclusive administrator of all rights in and to each Published Composition, and shall be entitled to exercise any and all rights with respect to the control, exploitation and administration of each Published Composition.

2. Publisher shall pay to you the following royalties as the so-called writer's share of income:

a. Ten cents for each copy of sheet music in standard piano/vocal notation and each dance orchestration printed, published and sold in the United States by Publisher or its licensees, for which payment is received by Publisher in the United States, after deduction of returns;

b. Fifty percent of Receipts with respect to all other income.

c. Writer shall receive Writer's public performance royalties throughout the world directly from Writer's performing rights society and shall have no claim whatsoever against Publisher for any share of public performance royalties received by Publisher.

3. Publisher shall pay to your publishing designee fifty percent of Net Income. "Net Income" shall mean Receipts less the following:

a. Royalties which shall be paid by Publisher to Writer hereunder;

b. Direct, out-of-pocket, administrative and exploitation expenses of Publisher with respect to the Compositions including, without limitation, registration fees, advertising and promotion expenses directly related to the Published Compositions, the costs of transcribing for lead sheets, and the costs of producing demonstration records; and

c. Reasonable attorneys' fees, if any, actually paid by Publisher to outside counsel for any agreements affecting solely the Published Compositions or any of them.

d. Publisher's administration fee equal to 10 percent of the Receipts.

Please signify that the foregoing correctly sets forth your understanding and agreement with us by signing in the appropriate place below.

Music Publishing
By: _____

ACCEPTED AND AGREED TO:
By: _____

SCHEDULE A

ASSIGNMENT OF COPYRIGHTS

The undersigned ("Assignor"), for good and valuable consideration, receipt of which is hereby acknowledged, hereby sells, conveys and assigns to MUSIC PUBLISHING, its successors and assigns, an undivided fifty percent (50%) interest in the entire right, title and interest throughout the world and universe which is derived from Assignor, in and to the musical composition(s) listed on the attached Schedule A, including, without limitation, the copyrights and any other rights relating to the musical compositions, now known or which may hereafter be recognized or come into existence, and any and all renewals and extensions of such copyrights and other rights under applicable laws, treaties, regulations and directives now or hereafter enacted or in effect.

IN WITNESS WHEREOF, Assignor has executed this instrument on this _____ day of _____[*month and year*].

_____

ACKNOWLEDGEMENTS

STATE OF _____ ss:
COUNTY OF _____

On _____ , before me personally came, known to me to be the individual described in and who executed the foregoing instrument, and he/she acknowledged to me that he/she executed it.

_____
Notary Public

SCHEDULE B

EXISTING COMPOSITIONS

Title	Songwriter(s) and Share(s)	Publisher(s) and Share(s)	Copyright Reg. No.

SESSION 3
LIVE ENTERTAINMENT

28th Cutting Edge Entertainment Law Seminar

The Pandemic REDUX
LIVE and Online

ADDENDUM D: {artist.name}

COVID-19 WAIVER OF LIABILITY HOLD HARMLESS AND INDEMNIFICATION AGREEMENT

ARTIST, on behalf of it/his/herself, the individual members of ARTIST, their respective successors and assigns, hereby acknowledges and agrees to the following:

1. ARTIST understands the hazards of the novel coronavirus ("COVID-19") and ARTIST is familiar with the Centers for Disease Control and Prevention ("CDC") guidelines regarding COVID-19. ARTIST acknowledges and understands that the circumstances regarding COVID-19 are changing from day to day and that, accordingly, the CDC guidelines are regularly modified and updated and ARTIST accepts full responsibility for familiarizing it/his/herself with the most recent updates.

2. Notwithstanding the risks associated with COVID-19, which ARTIST readily acknowledges, ARTIST hereby willingly chooses to provide the services pursuant to ARTIST's Performance Contract (the "CONTRACT") with _____ ("_____").

3. ARTIST acknowledges and fully assumes the risk of illness or death related to COVID-19 arising out of ARTIST services under the terms of the CONTRACT. ARTIST, for it/his/herself, the individual member of ARTIST and on behalf of their respective family, estate, heirs, executors, administrators, assigns and personal representatives hereby forever release, waive, discharge and covenant not to sue _____ and _____'s successors and assigns, and the respective officers, directors, agents and employees of each of the foregoing (the "_____ Released Parties") from any and all liability, claims, demands, actions, and causes of action whatsoever, directly or indirectly arising out of or related to any loss, damage, or injury, including death, that may be sustained by ARTIST related to COVID-19 whether caused by the negligence of the _____ Released Parties, any third party or otherwise, while performing ARTIST's services under the terms of the CONTRACT.

4. ARTIST, to the extent permitted by the law and constitution of the State of

Louisiana, agrees to defend, indemnify and hold harmless _____ and _____'s successors and assigns, and the respective officers, directors, agents and employees of each of the foregoing (the "_____ Indemnitees"), from and against any claims, loss, damages, injuries, liabilities, costs and expenses, including reasonable attorneys' fees and court costs they may suffer, resulting from or arising out of, wholly or in part:, any bodily injury, illness, death, loss of use, monetary loss, or any other injury from or related to the infection of COVID-19 whether caused by the negligence of the _____ Indemnities or otherwise. ARTIST will reimburse _____, _____'s affiliates and _____ Indemnitees, on demand, for any payment made at any time after the date hereof in respect of any liability or claim in respect of which _____ Indemnitees entitled to be indemnified.

5. It is ARTIST's express intent that this COVID-19 Waiver of Liability Hold Harmless and Indemnification Agreement shall bind any assigns and representatives, and shall be deemed as a RELEASE, WAIVER, and DISCHARGE AND COVENANT NOT TO SUE the _____ Released Parties. This Agreement and the provisions contained herein shall be construed, interpreted and controlled according to the laws of the State of Louisiana. **ARTIST HEREBY KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A JURY TRIAL OF ANY DISPUTE ARISING IN CONNECTION WITH THIS AGREEMENT.**

IN SIGNING THIS AGREEMENT, ARTIST ON BEHALF OF IT/HIS/HERSELF AND THE INDIVIDUAL MEMBERS OF ARTIST ACKNOWLEDGES AND REPRESENT THAT ARTIST has read the foregoing COVID-19 Waiver of Liability Hold Harmless and Indemnification Agreement, understands it and signs it voluntarily as ARTIST's own free act and deed; and no oral representations, statement, or inducements, apart from the foregoing written agreement have been made.

IN WITNESS WHEREOF, ARTIST, on behalf of it/his/herself and the individual members of ARTIST has signed this COVID-19 Waiver of Liability Hold Harmless and Indemnification Agreement on this _____ day of _____, 2020.

SIGNATURE: ______________________________

NAME: __________________________________

Here's a good one, from the Promoter Side:

6) Force Majeure/Termination: Notwithstanding any other provision in this Agreement, neither party shall be liable to the other for any failure of performance hereunder caused by an event of force majeure, which shall include an Act of God, epidemic, pandemic, insurrection or civil disorder, war or military operations, national or local emergency, act or omissions of governments, or other competent authority, industrial disputes of any kind, fire, explosion, flood, subsidence, inclement weather, acts of omissions of persons or bodies for whom neither party is responsible, or any other cause whether similar or dissimilar outside of either party's control. **In the event of a force majure event, the Term shall be suspended for a period of time equal to the duration of the force majure event and for up to six months thereafter, after which either party may elect to terminate this Agreement with no liability, provided that in the event that LICENSEE is in an un-recouped position with respect to the Advance or any production or capitalization costs hereunder, LICENSOR shall not be entitled to exercise such termination right unless and until LICENSEE is reimbursed for its un-recouped balance or waives its right thereto.**

In the event that LICENSEE is unable or unwilling to proceed with the production and presentation of the Tour prior to such time as any portion of the Advance is payable hereunder due to the current pandemic, other force majure, or any other reason, LICENSOR's sole remedy hereunder shall be the termination of this Agreement.

Here's a FM clause from a major show "buyer", that was "worked out between the parties" after COVID hit because the show owner have received a portion of their money and promoter doesn't have an easy way to get it back, based on the language.

In the event that the performance of any of the provisions of this Agreement shall be prevented or interfered with by an act of God, fire or national or local calamity, the acts or regulations of any public authority or labor union, labor difficulties or strike, war, epidemic, storm or inclement weather, or any other cause not due to the gross negligence or willful act of either Party that renders such performance impossible, Producer and Presenter shall be relieved of their obligations hereunder with respect to the performance(s) so prevented because of such cause. In the event VENUE decides the Theater should be closed because of fire, national or local calamity or any similar "Act of God", neither party shall have any financial claim on the other resulting from losses during the period of closing. In such event Producer will not have to reschedule.

This was the money clause that gave teeth to the FN clause: Presenter agrees to pay Producer a total sum of Five Hundred Thousand Dollars and Zero Cents ($500,000.00) (the "**Fixed Guarantee**") for sixteen (16) performances payable by wire transfer as follows:

i. Two Hundred Fifty Thousand Dollars and Zero Cents ($250,000.00) payable five (5) business days after the execution hereof by Producer.

_____

Here is another clause that includes refunds of out of pocket costs:

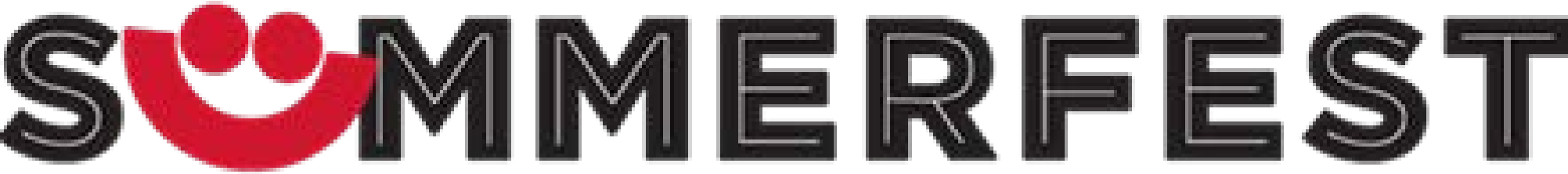
Force Majeure: Notwithstanding any other provision in this Agreement, neither party shall be liable to the other for any failure of performance hereunder caused by an event of force majeure, which shall include an Act of God, **epidemic**, insurrection or civil disorder, war or military operations, national or local emergency, act or omissions of governments, or other competent authority, industrial disputes of any kind, fire, explosion, flood, subsidence, inclement weather, acts of omissions of persons or bodies for whom neither party is responsible, or any other cause whether similar or dissimilar outside of either party's control (each, a "Force Majeure Event"). In the event of any Force Majeure Event, the Term shall be suspended for a period of time equal to the duration of the Force Majeure Event and for up to one (1) month thereafter, to the extent necessary, provided that if such Force Majeure Event continues and the agreement remains suspended for at least two (2) months, either party may elect to terminate the Term of this Agreement with no liability, **provided that Licensor shall be entitled to retain any previously paid portions of the Guarantee to the extent it has incurred costs related to furnishing the Show hereunder.**

Major project/longer clause:

Licensee, Owner or Artist, as applicable, will not be deemed in breach of this Agreement to the extent the performance of its obligations is delayed or becomes impossible or commercially impractical by reason a "Force Majeure Event". "Force Majeure Event" means the serious illness or injury continuing for more than 120 days, consecutively, debilitating disability or death of Artist other than self-inflicted or otherwise caused by Artist or the occurrence of an event outside the reasonable control of Licensee, Owner, or Artist, as applicable, such as an accident, an act or regulation of a public authority, fire, riot or civil commotion, lockout or strike or other labor dispute, disease, **epidemic (including health epidemic),** act of terrorism or imminent threat thereof, substantial interruption in, or substantial delay or failure of, technical facilities, failure or substantial delay of necessary transportation services, war conditions, emergencies, acts of God. During the duration of any Force Majeure Event, the party invoking it may suspend those obligations that become **impossible commercially or impractical** to perform by reason of the Force Majeure Event. **In the event of any such suspension, the running of the Term and the Retention Period, specific dates, periods and time requirements referred to in this Agreement will be postponed or extended accordingly until the end of the Force Majeure Event.**

If any suspension invoked by Owner under this paragraph continues for more than 9 months, Licensee may terminate its obligations under this Agreement by notice given to Owner, and Licensee shall be deemed to have fulfilled all of its obligations under this Agreement, other than those obligations which survive the Term of this Agreement, as of the date of such notice, provided, however, that Licensee's rights to otherwise exploit the rights granted to it hereunder shall continue for the Term and Retention Period. In addition, Licensee shall be entitled to recover, and Owner

and Artist shall return all deferred payments, unrecouped Advances and a pro-rated (based on credit given for the elapsed portion of the Term and Retention Period) portion of all non-recoupable payments; the calculation of such recovery shall be made by Licensee following the end of the Retention Period and Owner shall make such payment of the sum due promptly following Licensee's written request therefor.


SUMMERFEST
MILWAUKEE • WISCONSIN
AMERICAN FAMILY INSURANCE

1. Operational Protocols. Artist and all of Artist's personnel, guests and subcontractors shall comply, with all guidelines, rules, regulations, and health and safety protocols imposed by Promoter related to the use and occupancy of [insert venue], the operation of the Event and/or any standards related to any public health emergency (collectively, "Operational Protocols"). Operational Protocols may include, without limitation, staggered arrival and departure times, temperature checks, pre-sanitization requirements, physical distancing, masks/face coverings, modified food & beverage service and handling, and requiring persons developing or exhibiting symptoms to leave the venue. Notwithstanding implementation of the Operational Protocols, Artist acknowledges that an inherent risk of exposure to COVID-19 exists in any public place where people are present.

2. Force Majeure. A "Force Majeure Event" is defined as an event beyond either party's reasonable control, that makes performance of this Agreement impossible, impractical, unfeasible or unsafe, including without limitations, illness, injury or death of Artist or a member of Artist's immediate family; theft, loss, destruction, or breakdown of collateral owned or leased by Artist or Promoter; act or regulation of public authority; fire, flooding, earthquake, hazardous conditions, riot or civil commotion, lockout, strike, or other labor dispute; disease, epidemic, pandemic (e.g. COVID-19, Ebola, SARS), and/or the lack of a readily available vaccine(s) for an epidemic or pandemic; substantial interruption in, delay or failure of necessary production or distribution facilities not within Artist's or Promoter's reasonable control, and/or similar or dissimilar cause beyond Artist's or Promoter's reasonable control; war conditions; act of public enemy or terrorism; emergencies or acts of God; or any other cause that is beyond the control of the parties.

3. Additional Clause [for hard-ticket events] To the extent that sellable capacity set forth in the offer is reduced in order to comply with requirements and/or recommendations of any applicable governmental authority, Purchaser/Promoter shall have the right to either: (a) cancel the engagement without penalty or further obligation, and receive a refund of any advance/deposit payments made; or (b) adjust the consideration payable for Artist's performance in order to compensate for such reductions to capacity and potential box office receipts.

17. INDEMNIFICATION/ASSUMPTION OF LIABILITY/INSURANCE:

A. ARTIST shall indemnify, protect, defend and hold harmless FESTIVAL, its parent, subsidiaries and affiliated entities, and its and their respective directors, officers, employees, agents, successors and assigns (the "Indemnified Parties") from and against, any and all claims, liabilities, losses, damages, injuries, demands, actions, causes of action, suits, proceedings, judgments, fines and expenses, including reasonable attorneys' fees, court costs and other legal expenses including, without limitation, those costs incurred at the trial and appellate levels and in any bankruptcy, reorganization, insolvency or other similar proceedings, and other legal expenses (collectively, "Claims") arising from or connected with: (i) any alleged or actual breach by ARTIST of any provision hereof or the inaccuracy of any warranty or representation made by ARTIST herein; (ii) any act or omission to act by ARTIST, its employees, agents or representatives directly or indirectly related to its performance of this CONTRACT; (iii) any act or omission relating to the ARTIST's performance of services; or (iv) any claim by a third party that the Performances constitute an infringement of the rights of such third party; provided however, ARTIST shall not be liable to the extent the Claims are caused by the sole gross negligence and intentional acts or omissions of the FESTIVAL or its employees, agents or representatives.

B. ARTIST shall be liable for the payment of any and all copyright royalties and fees. ARTIST shall defend and hold harmless FESTIVAL against any and all costs, losses, damages, attorney fees and/or claims for infringement or violation of any copyright or proprietary right whatsoever. ARTIST assumes financial responsibility for damages to the premises, equipment or properties of FESTIVAL that results from the intentional or negligent acts or omission by ARTIST, its agents, its employees, or its representatives. FESTIVAL may deduct repair or replacement costs as an expense to ARTIST at settlement from ARTIST's compensation.

C. ARTIST expressly assumes all risks inherent to the rendition of the services hereunder, and releases FESTIVAL from all liability from such, including, without limitation, risk of injury to ARTIST and its personal property while engaged in the services pursuant to this CONTRACT, except for and to the extent of any liability that is due solely to the gross negligence or willful misconduct of FESTIVAL. Without limiting the generality of the assumption and waiver of liability of the previous sentence, ARTIST further agrees to execute the COVID-19 Waiver of Liability Hold Harmless and Indemnification Agreement attached hereto as ADDENDUM D.

D. ARTIST shall be liable for all copyright royalties and fees and defense, and defend and hold harmless FESTIVAL against any and all costs, loss, damages,

attorney fees and/or claims of infringement or violation of any copyright or proprietary right whatsoever.

E. FESTIVAL will maintain appropriate insurance coverage and policies applicable to its general liability and liquor law liability.

21. FORCE MAJEURE: The EVENT is rain or shine. If, however, the EVENT is cancelled due to an event of force majeure, including without limitation, fire, flood, pandemic (including but not limited to COVID-19), epidemic, earthquake, hurricane, explosion, labor dispute or strike, act of God or public enemy, equipment failure, riot or civil disturbance, terrorism, threat of terrorism, bomb threat, periods of national mourning, war (declared or undeclared), or any federal, state or local government law, order or regulation, order of any court or jurisdiction, or other cause beyond the control of FESTIVAL (each a "Force Majeure Event"), then FESTIVAL will be relieved of all obligations to ARTIST hereunder. Neither ARTIST nor ARTIST's representative will have any claim against FESTIVAL in the event the EVENT is cancelled as a result of a Force Majeure Event. In the event of ARTIST's cancellation due to a serious illness, ARTIST will provide FESTIVAL with a letter from ARTIST's physician specifying the anticipated length of time of ARTIST's incapacity so that an alternative performance date/time may be arranged or a replacement artist may be secured. In the event of any cancellation as a result of a Force Majeure Event, FESTIVAL and ARTIST shall cooperate in good faith to establish an alternative date for ARTIST's performance, provided that neither party shall be in breach hereof should the parties be unable to schedule such an alternative date. **Notwithstanding the foregoing, in all cases of cancellation as a result of a Force Majeure Event, ARTIST shall immediately return to FESTIVAL any amounts previously advanced to ARTIST hereunder and no further obligation shall exist between the parties.**

SESSION 4

RECENT COURT DECISIONS

28th Cutting Edge Entertainment Law Seminar

The Pandemic REDUX

LIVE and Online

CUTTING EDGE ENTERTAINMENT LAW CONFERENCE
August 22-24th, 2019

Attorney Ethics and Professionalism-CLE OUTLINE: Professionalism and the Ornery Opponent:

David A. Dalia
Attorney at Law
830 Union Street, Suite 302
New Orleans, LA 70112
Phone: (504)-524-5541
E-Mail: davidadalia@gmail.com

With Judith A. DeFraites and David A. Dalia

Dedicated to Vernon P. Thomas, Esq., a truly great man.

OUTLINE

I. Some Louisiana Supreme Court disciplinary cases- August 2018 - July 2019
II. Pertinent Disciplinary Rules
III. Professional Rules Governing Escrow Accounts

TEXT

I. Some Louisiana Supreme Court disciplinary cases- August 2018 - July 2019

"IN RE: M G. S
NO. 2019-B-0908
SUPREME COURT OF LOUISIANA
June 26, 2019..." In re S (La., 2019)

Motion filed by the Office of Disciplinary Counsel ("ODC") against respondent, M G. S. The motion seeks to revoke respondent's probation and make the previously-deferred portion of his suspension executory based on allegations that respondent failed to comply with the conditions of probation imposed in In re: S, 17-1043 (La. 10/16/17), 226 So. 3d 1102 ("S I").

The record in S I demonstrated that respondent mismanaged his client trust account, neglected a legal matter, failed to communicate with a client, and failed to cooperate with the ODC in two

investigations. For this misconduct, the court suspended respondent from the practice of law for one year and one day, with all but sixty days deferred, followed by a two-year period of supervised probation with the following conditions: (1) respondent shall successfully complete Trust Accounting School; (2) respondent shall successfully complete Ethics School; and:

(3) respondent shall provide the ODC with quarterly audits of his client trust account.

The ODC alleged that respondent failed to submit quarterly audits of his client trust account, as required by his probation agreement.

After a hearing, at which respondent failed to appear, the disciplinary board concluded that respondent failed to comply with the terms and conditions of his probation by failing to provide the ODC with the name of a CPA for approval and by failing to provide any quarterly audits of his client trust account as required by the court's order in S I a.

"DECREE

For the reasons assigned, respondent's probation is revoked and the previously-deferred portion of the one year and one day suspension imposed in In re: S, 17-1043 (La. 10/16/17), 226 So. 3d 1102, is hereby made immediately executory." In re S (La., 2019)

"IN RE: P. G.
NO. 2018-B-1646
SUPREME COURT OF LOUISIANA
June 26, 2019
ATTORNEY DISCIPLINARY PROCEEDING..." In re G (La., 2019)

"On February 3, 2016, the ODC received an overdraft notice regarding a November 23, 2015 overdraft in respondent's client trust account. The overdraft resulted from respondent's attempt to pay a third-party medical provider for services rendered to a client who had no funds in the trust account." In re G (La., 2019)

Thereafter, the ODC's forensic auditor conducted an audit of respondent's trust account for the period of August 1, 2015 through January 31, 2016. The audit revealed that respondent regularly paid non-client expenses and made cash withdrawals from his trust account; these non-client expenses and cash withdrawals totaled $33,219.33 during the audit period. The audit also revealed that, on January 31, 2016, the trust account balance to satisfy pending client expenditures should have been at least $16,345.62. Instead, the balance on that date was $3,235.61, resulting in a deficit of $13,110.01.

On March 17, 2016, respondent informed the ODC that he was addicted to OxyContin, explaining that "the cost of the medication coupled with its effects on me overwhelmed my finances and I eventually began to take money from my Trust account." He also informed the

ODC that he had contacted the Judges and Lawyers Assistance Program ("JLAP") and was preparing to enter inpatient treatment. He further informed the ODC that "I have also gone through my files and paid all outstanding debts that had been previously withheld from client settlements." This last statement was confirmed by the ODC's audit of respondent's trust account. Finally, during his October 26, 2016 sworn statement to the ODC, respondent admitted that he regularly used his trust account as a second operating account in 2015.

On July 7, 2016, respondent completed a ninety-day inpatient treatment program at Palmetto Addiction Recovery Center. Palmetto's medical director diagnosed respondent with severe opioid use disorder, among other diagnoses. On July 12, 2016, respondent signed a five-year JLAP recovery agreement.

Regarding mitigating factors, the committee noted that the ODC had stipulated to the following: absence of a prior disciplinary record, timely good faith effort to make restitution or to rectify the consequences of the misconduct, and full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings.

In light of the above findings, the committee recommended respondent be suspended from the practice of law for one year and one day, fully deferred, subject to the following conditions:...

1. Respondent shall continue to be bound by the terms of his JLAP recovery agreement for at least two years;

2. Respondent shall obtain regular audits of his trust account, to be performed by a CPA approved by the ODC;

3. Respondent shall submit the findings of the audits on a quarterly basis to the ODC for two years;

4. Respondent shall take at least six hours of continuing legal education in the area of law office practice/client trust account management; and

5. Respondent shall successfully complete the Louisiana State Bar Association's Trust Accounting School within one year.

The ODC objected to the leniency of the committee's recommended sanction, arguing that the period of deferment is not supported by the record.

"The board recognized the sole aggravating factor of multiple offenses." In re Giraud (La., 2019) "Based on this reasoning, we will suspend respondent from the practice of law for one year and one day, with all but six months deferred, subject to two years of probation with the conditions set forth in the board's report,..."

IN RE: J F. O, JR.
NO. 2019-OB-0985
SUPREME COURT OF LOUISIANA
June 26, 2019

ORDER

The Office of Disciplinary Counsel ("ODC") filed formal charges against respondent, alleging that he failed to file federal tax returns on behalf of his law firm and failed to remit funds withheld from his employees' paychecks to the federal government. Respondent now seeks to permanently resign from the practice of law in lieu of discipline. The ODC has concurred in respondent's petition.

IT IS FURTHER ORDERED that J F. O. Jr. shall be permanently prohibited from practicing law in Louisiana or in any other jurisdiction in which he is admitted to the practice of law; shall be permanently prohibited from seeking readmission to the practice of law in this state or in any other jurisdiction in which he is admitted; and shall be permanently prohibited from seeking admission to the practice of law in any jurisdiction.

IN RE: T A. H
NO. 2019-B-0827
SUPREME COURT OF LOUISIANA
June 17, 2019
ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

Respondent, T A. H, was arrested for alcohol-related misconduct on four occasions, three of which involved driving while intoxicated. For this misconduct, we accepted a joint petition for consent discipline filed by respondent and the Office of Disciplinary Counsel ("ODC") and suspended respondent for a period of one year and one day, with all but six months deferred, subject to a period of probation to coincide with respondent's recovery agreement with the Judges and Lawyers Assistance Program ("JLAP").1 In re: H, 17-0726 (La. 9/15/17), 224 So. 3d 963

IN RE: A D P
NO. 2019-B-0901

SUPREME COURT OF LOUISIANA
June 17, 2019
ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

The Office of Disciplinary Counsel ("ODC") commenced an investigation into allegations that respondent neglected a legal matter, failed to communicate with a client, and engaged in a personal relationship with a current client. Following the filing of formal charges, respondent and the ODC submitted a joint petition for consent discipline in which respondent admitted that his conduct violated Rules 1.3, 1.4(a)(3), 1.7, and 8.4(a) of the Rules of Professional Conduct. Having reviewed the petition,

IT IS ORDERED that the Petition for Consent Discipline be accepted and that A D P, Louisiana Bar Roll number 25815, be and he hereby is suspended from the practice of law for a period of one year.

IT IS FURTHER ORDERED that all costs and expenses in the matter are assessed against respondent in accordance with Supreme Court Rule XIX, § 10.1, with legal interest to commence thirty days from the date of finality of this court's judgment until paid.

IN RE: K L J
No. 2019-B-0653
SUPREME COURT OF LOUISIANA
June 3, 2019
ATTORNEY DISCIPLINARY PROCEEDING

Crichton, J., would reject the petition for consent discipline.

I dissent from the per curiam, because, in my view, the discipline of one year and one day, with only thirty days deferred, is too lenient. Respondent herself stipulated that she as grossly negligent in the mismanagement of her client trust account. Further, I find respondent's failures to respond the Office of Disciplinary Counsel in its investigations of that mismanagement to be egregious.

With respect to Count I, Respondent initially failed to respond to the ODC's notice of a June 2017 overdraft of her client trust account. After ODC issued a formal complaint, respondent submitted a request for an extension of time to respond, but the account was again overdrawn. She was then sent notice of the second overdraft, but failed to respond to that notice, requiring the ODC to send a second request for a response. At that point, by now months later in October 2017, respondent again requested another extension of time. The ODC granted her that courtesy, but she again failed to respond. After a third request for a response from the ODC, respondent provided some materials, but it was incomplete. Thus, ODC had to request additional documentation, leading to a similar circle of events in which respondent again requested additional time, which was granted by ODC, but did not submit the supplemental materials.

IN RE: G C
NO. 2019-B-0406
SUPREME COURT OF LOUISIANA

June 3, 2019
ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

Respondent, G C, engaged in a conflict of interest. For this misconduct, we suspended respondent for a period of six months, with all but thirty days deferred, subject to one year of unsupervised probation. In re: C, 18-1076 (La. 12/5/18), 2018 WL 6390368 ("C I"). Respondent did not file a request for a rehearing, and the order of suspension became final and effective on December 20, 2018. In the instant matter, the Office of Disciplinary Counsel ("ODC") seeks to make the deferred suspension executory, based upon allegations that respondent engaged in the unauthorized practice of law during his suspension and made false representations in his affidavit for reinstatement.

UNDERLYING FACTS AND PROCEDURAL HISTORY

On February 8, 2019, respondent telephoned the ODC to discuss his probation. Both during this telephone call and thereafter in writing, respondent admitted that he regularly engaged in the practice of law after the effective date of his suspension.

The ODC has verified numerous actions taken by respondent during his suspension which constitute the practice of law:...

We agree that these circumstances constitute misconduct. Although the ODC has requested that that the previously-deferred portion of the suspension be made executory, we find no evidence that respondent has served any part of the active portion of his suspension. To the contrary, the record reveals respondent continued to practice law between the finality of our decree on December 20, 2018 through January 31, 2019. Accordingly, we will make the entire six-month suspension imposed in C I immediately executory, to commence from the date of this decree.

WHAT WAS THE CONFLICT OF INTEREST?:

IN RE: G C
NO. 2018-B-1076
SUPREME COURT OF LOUISIANA
December 5, 2018
ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel ("ODC") against respondent, G C, an attorney licensed to practice law in Louisiana.

UNDERLYING FACTS

In February 2016, Cedric Duncan and his sisters, Pamelian Norwood and Angela Freeman, hired respondent to handle the succession of their mother, Ethel Duncan, who died intestate on February 11, 2016. Respondent charged a flat fee of $1,800, and the siblings agreed to split the fee three ways. Respondent was paid the entire $1,800 and provided Cedric with a receipt for $600. Nevertheless, respondent claimed he never received any money directly from Cedric, asserting that Angela paid Cedric's portion of the fee.

The petition for possession respondent prepared and filed excluded Cedric as an heir to Ethel's estate. Respondent claimed Pamelian and Angela told him Cedric no longer wished to be a part of the succession. However, respondent never verified this with Cedric. In June 2016, the judge signed the judgment of possession splitting Ethel's property equally between Pamelian and Angela.

When Cedric received a copy of the judgment of possession, he hired attorney Kristina Shapiro to reopen the succession, paying her $3,000 for the representation.

Ms. Shapiro filed a petition to annul the judgment of possession and for damages, naming Pamelian, Angela, and respondent as defendants. Ms. Shapiro also filed a motion to reopen the succession.

Respondent filed an answer to the petition to annul the judgment of possession and for damages on behalf of Pamelian, Angela, and himself. Respondent also appeared at the December 1, 2016 hearing to reopen the succession and argued on behalf of Pamelian and Angela. The judge reopened the succession and named Cedric as the administrator. Shortly thereafter, respondent withdrew from the representation of Pamelian and Angela.

[See Disciplinary Proceedings in this case above]

IN RE: C J. W
NO. 2019-B-0663
SUPREME COURT OF LOUISIANA
June 3, 2019
ATTORNEY DISCIPLINARY PROCEEDINGS

PER CURIAM

The Office of Disciplinary Counsel ("ODC") commenced an investigation into allegations that respondent committed serious attorney misconduct, including neglect of his clients' legal matters, failure to communicate with his clients, failure to refund unearned fees, failure to placed advanced deposits for costs and expenses into his client trust account, and failure to return his clients' files upon the termination of the representation. Respondent also practiced law while he was ineligible to do so, failed to cooperate with the ODC in its investigation, and was charged with issuing worthless checks. Following the filing of formal charges, respondent and the ODC submitted a joint petition for consent discipline. Having reviewed the petition,

IT IS ORDERED that the Petition for Consent Discipline be accepted and that C J. W, Louisiana Bar Roll number 29017, be suspended from the practice of law for a period of three years, which suspension commences from the effective date of this order.

IT IS FURTHER ORDERED that respondent shall make full restitution to all clients to whom refunds are owed.

IT IS FURTHER ORDERED that all costs and expenses in the matter are assessed against respondent..

IN RE: M. F
NO. 2018-B-1483
SUPREME COURT OF LOUISIANA
May 28, 2019
ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

Pursuant to Supreme Court Rule XIX, § 21, the Office of Disciplinary Counsel ("ODC") has filed a petition seeking the imposition of reciprocal discipline against respondent, M R. F, an attorney licensed to practice law in Louisiana, Tennessee, and Colorado, based upon discipline imposed by the Supreme Court of Colorado.

UNDERLYING FACTS AND PROCEDURAL HISTORY

In 1987, respondent maintained a law office in Denver, Colorado, wherein he accepted new legal cases and collected retainers until October 21, 1987. On October 23, 1987, respondent essentially abandoned his law practice when he moved to Ireland without notice to most of his clients. Thereafter, respondent failed to file his 1988 annual registration statement or pay the $90 registration fee.

Seven of respondent's clients filed grievances with the Colorado Disciplinary Counsel. Respondent failed to appear and answer a multiple count disciplinary complaint. The Supreme Court of Colorado ultimately found that respondent abandoned his law practice, converted his clients' funds to his own use, and failed to cooperate in the disciplinary proceedings. For this misconduct, the Supreme Court of Colorado disbarred1 respondent and ordered him to make restitution to the seven clients in the total amount of $14,750.36.

After receiving notice of the Colorado order of discipline on January 27, 2017, the ODC filed a motion to initiate reciprocal discipline proceedings in Louisiana, pursuant to Supreme Court Rule XIX, § 21. A copy of the Final Judgment and Order issued by the Supreme Court of Colorado was attached to the motion.

On September 7, 2018, this court rendered an order giving respondent thirty days to demonstrate why the imposition of identical discipline in this state would be unwarranted. Respondent did not file a response to the court's order.

DISCUSSION

The standard for imposition of discipline on a reciprocal basis is set forth in Supreme Court Rule XIX, § 21(D). That rule provides:

> Discipline to be Imposed. Upon the expiration of thirty days from service of the notice pursuant to the provisions of paragraph B, this court shall impose the identical discipline ... unless disciplinary counsel or the lawyer demonstrates, or this court finds that it clearly appears upon the face of the record from which the discipline is predicated, that:
>
> (1) The procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
> (2) Based on the record created by the jurisdiction that imposed the discipline, there was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the court could not, consistent with its duty, accept as final the conclusion on that subject; or
> (3) The imposition of the same discipline by the court would result in grave injustice or be offensive to the public policy of the jurisdiction; or
> (4) The misconduct established warrants substantially different discipline in this state;
> If this court determines that any of those elements exists, this court shall enter such other order as it deems appropriate. The burden is on the party seeking different discipline in this jurisdiction to demonstrate that the imposition of the same discipline is not appropriate.

In the instant case, respondent has made no showing of infirmities in the Colorado proceeding, nor do we discern any from our review of the record. Furthermore, we find there is no reason to deviate from the sanction imposed in Colorado as only under extraordinary circumstances should there be a significant variance from the sanction imposed by the other jurisdiction. In re: Aulston, 05-1546 (La. 1/13/06), 918 So. 2d 461. See also In re Zdravkovich, 831 A.2d 964, 968-69 (D.C. 2003) ("there is merit in according deference, for its own sake, to the actions of other jurisdictions with respect to the attorneys over whom we share supervisory authority").

Under these circumstances, it is appropriate to defer to the Colorado judgment imposing discipline upon respondent. Accordingly, we will impose reciprocal discipline in the form of disbarment.

Footnotes:

1. According to the Colorado Rules of Civil Procedure, Rule 251.6(a), disbarment is the revocation of an attorney's license to practice law in the state for at least eight years, subject to readmission as provided by Rule 251.29(a), which provides in pertinent part that "[a] disbarred attorney may not apply for readmission until at least eight years after the effective date of the

order of disbarment."...
In re Franks (La., 2019)

BAR FORGIVENESS IS POSSIBLE:

IN RE: S J. H
NO. 2019-OB-0459
SUPREME COURT OF LOUISIANA
May 20, 2019
ON APPLICATION FOR REINSTATEMENT

PER CURIAM

This proceeding arises out of an application for reinstatement to the practice of law filed by petitioner, S J. H, a suspended attorney.

UNDERLYING FACTS AND PROCEDURAL HISTORY

In May 2001, petitioner was arrested and charged with driving while intoxicated ("DWI"), speeding, and improper lane usage. Ultimately, the DWI charge was dismissed, and petitioner pleaded guilty to the traffic charges.

In September 2001, petitioner vandalized a truck belonging to his ex-wife's boyfriend while it was parked at his ex-wife's home. He was arrested and charged with simple criminal damage to property and violation of a restraining order. He was also cited for failure to yield to an emergency vehicle for refusing to stop his car when the police ordered him to do so.

In December 2002, petitioner was arrested and charged with DWI second offense, hit and run, disobeying a red light, reckless driving, and failing to maintain proof of insurance. In February 2005, petitioner pleaded guilty to failing to report an accident, disobeying a red light, and reckless driving. In June 2005, the record of petitioner's arrest was expunged.

In June 2005, petitioner gave a sworn statement to the Office of Disciplinary Counsel ("ODC") regarding the three matters set forth above. In response to the ODC's questions, petitioner asserted his Fifth Amendment privilege against self-incrimination. The ODC insisted that he answer on the ground that all criminal charges against him had either been declined or resolved via plea agreement. Nevertheless, petitioner continued to refuse to answer, thereby failing to cooperate with the ODC's investigation.

For the above misconduct, we suspended petitioner from the practice of law for three years. In re: H, 09-0116 (La. 6/26/09), 15 So. 3d 82.

In June 2015, petitioner pleaded no contest to domestic abuse battery. In May 2016, we

accepted a joint petition for consent discipline filed by petitioner and the ODC and suspended petitioner from the practice of law for one year. In re: H, 16-0686 (La. 5/27/16), 193 So. 3d 124.

In August 2018, petitioner filed an application for reinstatement with the disciplinary board, alleging he has complied with the reinstatement criteria set forth in Supreme Court Rule XIX, § 24(E). The ODC took no position regarding the application for reinstatement. Accordingly, the matter was referred for a formal hearing before a hearing committee.

Following the hearing, the hearing committee recommended that petitioner be reinstated to the practice of law on a conditional basis for one year, subject to the following conditions:

1. Petitioner shall continue diagnostic monitoring with JLAP during the one-year probationary period. If his JLAP diagnostic monitoring agreement terminates by its own terms during the probationary period, then he shall execute a new agreement to satisfy this condition;

2. Petitioner shall maintain good standing pursuant to his JLAP agreement;

3. Petitioner shall maintain compliance with the Rules of Professional Conduct;

4. Petitioner shall cooperate with the ODC in the event of an inquiry as to his fitness to practice law; and

5. Petitioner shall satisfy all requirements to practice law pursuant to the rules governing attorneys in the State of Louisiana.

Neither petitioner nor the ODC objected to the hearing committee's recommendation.

DISCUSSION

After considering the record in its entirety, we find petitioner has met his burden of proving that he is entitled to be reinstated to the practice of law on a conditional basis. Accordingly, we will order that petitioner be reinstated to the practice of law, subject to a one-year period of probation governed by all of the conditions recommended by the hearing committee.
In re H (La., 2019)

IN RE: Y J K
NO. 2019-B-0356
SUPREME COURT OF LOUISIANA
May 20, 2019
ATTORNEY DISCIPLINARY PROCEEDING

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel ("ODC") against respondent, Y J K, an attorney licensed to practice law in Louisiana

but currently on interim suspension based upon her conviction of a serious crime. In re: K, 16-0331 (La. 3/14/16), 186 So. 3d 649 (Johnson, C.J., recused).

UNDERLYING FACTS

In February 2013, respondent qualified to run for Orleans Parish Juvenile Court, representing in her qualifying documents that she was domiciled in Orleans Parish. Respondent subsequently prevailed in a runoff election. In March 2014, a grand jury in Orleans Parish indicted respondent on two felony criminal charges arising out of allegations that she was actually domiciled in St. Tammany Parish and that she made false representations about her domicile when she qualified to run for judicial office.

Following the indictment, this court disqualified respondent from exercising any judicial function during the pendency of further proceedings. In re: K, 14-0924 (La. 5/15/14), 140 So. 3d 711 (Johnson, C.J., recused). Prior to a final adjudication of the judicial discipline matter against respondent, she lost the status of a judge when she was defeated in the fall 2014 elections. As a result, the ODC assumed jurisdiction over respondent.

In November 2015, a jury found respondent guilty of both counts of the indictment. She was sentenced in February 2016 to a suspended jail sentence and probation.

Thereafter, respondent filed a motion for an out of time appeal of her criminal conviction, which motion was granted. The court of appeal then remanded the case to the trial court with instructions to conduct an evidentiary hearing on a claim of ineffective assistance of counsel. State v. K, 17-0123 (La. App. 4th Cir. 10/27/17), 231 So. 3d 110.

Following remand, on December 18, 2017, respondent entered into a plea agreement, whereby the original convictions were vacated. In exchange, respondent pleaded guilty to a misdemeanor violation of La. R.S. 18:1461.3(C)(4) (disobeying any lawful instruction of a registrar, deputy registrar, or commissioner).1

DISCIPLINARY PROCEEDINGS

In March 2016, the ODC filed formal charges against respondent, alleging that her conduct violated the following provisions of the Rules of Professional Conduct: Rules 8.4(a) (violation of the Rules of Professional Conduct), 8.4(b)

(commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

Respondent initially failed to answer the formal charges, and the factual allegations contained therein were deemed admitted and proven by clear and convincing evidence. Eight months later, respondent, through counsel, filed an unopposed motion to recall the deemed

admitted order. She also sought a stay of the formal charge proceedings pending her criminal appeal. The motion and request for a stay were granted, and the deemed admitted order was recalled.
In re K (La., 2019)

In her submission, respondent indicated that she is the sole caregiver for her eighty-eight year old mother and fifty-six year old brother, both of whom are disabled and in need of constant care. After respondent's sister passed away in November 2015, respondent moved to Atlanta, Georgia to take care of them. In May 2018, respondent was forced to move with them back to Louisiana due to financial hardship. During the process, they have been without any home healthcare or transportation assistance services.

Respondent argued that she possesses good character and reputation. In support, she submitted three character reference letters as well as a transcript of her deposition, wherein she testified about her lifetime involvement in church and volunteer work with various juvenile agencies.

Respondent suggested that this matter is guided by the court's ruling in In re: Richmond, 08-0742 (La. 12/2/08), 996 So. 2d 282, wherein an attorney was found to have knowingly made false statements under oath regarding his domicile when he qualified as a candidate for public office. For his misconduct, the court suspended the attorney for six months, and in light of the mitigating factors present, deferred all but sixty days of the suspension. Respondent indicated that a similar sanction would be appropriate here, although, unlike Mr. Richmond, respondent did not occupy a position of public trust at the time of her conduct.2 Respondent requested that any sanction be made retroactive to the date of her interim suspension, and requested that all costs and expenses associated with this proceeding be waived as she has been unemployed since December 2015.

In its submission on sanction, the ODC indicated that it could not stipulate to the presence of "personal problems" as a mitigating factor, inasmuch as there appeared to be no correlation between the acts of dishonesty by respondent in falsifying her domicile in the qualifying process and her mother's health problems and her brother's care needs. The ODC agreed that this matter is guided by Richmond, but noted that unlike respondent, Mr. Richmond was not criminally prosecuted for his conduct. The ODC suggested that respondent be suspended from the practice of law for one year, retroactive to the date of her interim suspension.

Hearing Committee Report

After considering the record, the hearing committee made factual findings consistent with the underlying facts set forth above. Based on those facts, the committee determined respondent violated the Rules of Professional Conduct as alleged in the formal charges.

The committee determined that respondent violated duties owed to the public of this State. Her actions were knowing and intentional when she falsified her domicile in an attempt to be

elected as a juvenile court judge in Orleans Parish. Her actions caused harm to the public's trust in individuals seeking a position such as a judgeship. Respondent admitted that her behavior caused an undue burden on the legal system and shed a "negative light on the judiciary and legal profession." After considering the ABA's Standards for Imposing Lawyer Sanctions, the committee determined the baseline sanction is suspension.

Upon review of the findings and recommendations of the hearing committee and disciplinary board, and considering the record, it is ordered that Y J K, Louisiana Bar Roll number 22096, be and she hereby is suspended from the practice of law for a period of one year, retroactive to March 14, 2016, the date of her interim suspension.

II. Pertinent Disciplinary Rules:

A. Louisiana Rules of Professional Conduct With amendments through July1, 2016:

Rule 1.15.
Safekeeping Property
(a)
A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. ...*[holding of client funds, see III, Escrow Section, below...]*... Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

Rule 3.2.
Expediting Litigation
A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Rule 3.4.
Fairness to Opposing Party and Counsel
A lawyer shall not:
(a)
unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;
(b)
falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
(c)

knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists;
(d)
in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;
(e)
in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or
(f)
request a person other than a client to refrain from voluntarily giving relevant information to another party unless:
(1)
the person is a relative or an employee or other agent of a client, and
(2)
the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

Rule 4.1.
Truthfulness in Statements to Others
In the course of representing a client a lawyer shall not knowingly:
(a)
make a false statement of material fact or law to a third person; or
(b)
fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

Rule 8.4.
Misconduct
It is professional misconduct for a lawyer to:
(a)
Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
(b)
Commit a criminal act especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
(c)
Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
(d)
Engage in conduct that is prejudicial to the administration of justice;
(e)
State or imply an ability to influence improperly a judge, judicial officer, governmental

agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;
(f)
Knowingly assist a judge or judicial officer in conduct that is a violation of applicable Rules of Judicial Conduct or other law; or
(g) Threaten to present criminal or disciplinary charges solely to obtain an advantage in a civil matter.

III. Professional Rules Governing Escrow Accounts:

A. Louisiana Rules of Professional Conduct With amendments through July1, 2016:

Rule 1.15.
Safekeeping Property
(a)
A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Except as provided in (g) and the IOLTA Rules below, funds shall be kept in one or more separate interest bearing client trust accounts maintained in a bank or savings and loan association: 1) authorized by federal or state law to do business in Louisiana, the deposits of which are insured by an agency of the federal government; 2) in the state where the lawyer's primary office is situated, if not within Louisiana; or 3) elsewhere with the consent of the client or third person. No earnings on a client trust account may be made available to or utilized by a lawyer or law firm. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.
(b)
A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account or obtaining a waiver of those charges, but only in an amount necessary for that purpose.
(c)
A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred. The lawyer shall deposit legal fees and expenses into the client trust account consistent with Rule 1.5(f).
(d)
Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. For purposes of this rule,
the third person's interest shall be one of which the lawyer has actual knowledge, and shall be limited to a statutory lien or privilege, a final judgment addressing disposition of those

funds or property, or a written agreement by the client or the lawyer on behalf of the client guaranteeing payment out of those funds or property. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly liver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e)

When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(f)

Every check, draft, electronic transfer, or other withdrawal instrument or authorization from a client trust account shall be personally signed by a lawyer or, in the case of electronic, telephone, or wire transfer, from a client trust account, directed by a lawyer or, in the case of a law firm, one or more lawyers authorized by the law firm. A lawyer shall not use any debit card or automated teller machine card to withdraw funds from a client trust account. On client trust accounts, cash withdrawals and checks made payable to "Cash" are prohibited.

A lawyer shall subject all client trust accounts to a reconciliation process at least quarterly, and shall maintain records of the reconciliation as mandated by this rule.

[Last sentence added 1/13/2015 and effective 4/1/2015]

(g)

A lawyer shall create and maintain an "IOLTA Account," which is a pooled interest bearing client trust account for funds of clients or third persons which are nominal in amount or to be held for such a short period of time that the funds would not be expected to earn income for the client or third person in excess of the costs incurred to secure such income.

(1)

IOLTA Accounts shall be of a type approved and authorized by the Louisiana Bar Foundation and maintained only in "eligible" financial institutions, as approved and certified by the Louisiana Bar Foundation. The Louisiana Bar Foundation shall establish regulations, subject to approval by the Supreme Court of Louisiana, governing the determination that a financial institution is eligible to hold IOLTA Accounts and shall at least annually publish a list of LBF approved/certified eligible financial institutions. Participation in the IOLTA program is voluntary for financial institutions. IOLTA Accounts shall be established at a bank or savings and loan association authorized by federal or state law to do business in Louisiana, the deposits of which are insured by an agency of the federal government or at an open end investment company registered with the Securities and Exchange Commission authorized by federal or state law to do business in Louisiana which shall be invested solely in or fully collateralized by U.S. Government Securities with total assets of at least $250,000,000 and in order for a financial institution to be approved and certified by the Louisiana Bar Foundation as eligible, shall comply with the following provisions:

(A)

No earnings from such an account shall be made available to a lawyer or law firm.
(B)
Such account shall include all funds of clients or third persons which are nominal in amount or to be held for such a short period of time the funds would not be expected to earn income for the client or third person in excess of the costs incurred to secure such income.
(C)
Funds in each interest bearing client trust account shall be subject to withdrawal upon request and without delay, except as permitted by law.
(2)
To be approved and certified by the Louisiana Bar Foundation as eligible, financial institutions shall maintain IOLTA Accounts which pay an interest rate comparable to the highest interest rate or dividend generally available from the institution to its non-IOLTA customers when IOLTA Accounts meet or exceed the same minimum balance or other eligibility qualifications, if any. In determining the highest interest rate or dividend generally available from the institution to its non IOLTA accounts, eligible institutions may consider factors, in addition to the IOLTA Account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that such factors do not discriminate between IOLTA Accounts and accounts of non IOLTA customers, and that these factors do not include that the account is an IOLTA Account. The eligible institution shall calculate interest and dividends in accordance with its standard practice for non IOLTA customers, but the eligible institution may elect to pay a higher interest or dividend rate on IOLTA Accounts.
(3)
To be approved and certified by the Louisiana Bar Foundation as eligible, a financial institution may achieve rate comparability required in (g)(2) by:
(A)
Establishing the IOLTA Account as:
(1) an interest bearing checking account; (2) a money market deposit account with or tied to checking; (3) a sweep account which is a money market fund or daily (overnight) financial institution repurchase agreement invested solely in or fully collateralized by U.S. Government Securities; or (4) an open end money market fund solely invested in or fully collateralized by U.S. Government Securities. A daily financial institution repurchase agreement may be established only with an eligible institution that is “well capitalized” or “adequately capitalized” as those terms are defined by applicable federal statutes and regulations. An open end money market fund must be invested solely in U.S. Government Securities or repurchase agreements fully collateralized by U.S. Government Securities, must hold itself out as a “money market fund” as that term is defined by federal statutes and regulations under the Investment Company Act of 1940, and, at the time of the investment, must have total assets of at least $250,000,000. “U.S. Government Securities” refers to U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest by the United

States or any agency or instrumentality thereof.

(B)

Paying the comparable rate on the IOLTA checking account in lieu of establishing the IOLTA Account as the higher rate product; or

(C)

Paying a "benchmark" amount of qualifying funds equal to 60% of the Federal Fund Target Rate as of the first business day of the quarter or other IOLTA remitting period; no fees may be deducted from this amount which is deemed already to be net of "allowable reasonable fees."

(4)

Lawyers or law firms depositing the funds of clients or third persons in an IOLTA Account shall direct the depository institution:

(A)

To remit interest or dividends, net of any allowable reasonable fees on the average monthly balance in the account, or as otherwise computed in accordance with an eligible institution's standard accounting practice, at least quarterly, to the Louisiana Bar Foundation, Inc.;

(B)

To transmit with each remittance to the Foundation, a statement, on a form approved by the LBF, showing the name of the lawyer or law firm for whom the remittance is sent and for each account: the rate of interest or dividend applied; the amount of interest or dividends earned; the types of fees deducted, if any; and the average account balance for each account for each month of the period in which the report is made; and

(C)

To transmit to the depositing lawyer or law firm a report in accordance with normal procedures for reporting to its depositors.

(5)

"Allowable reasonable fees" for IOLTA Accounts are: per check charges; per deposit charges; a fee in lieu of minimum balance; sweep fees and a reasonable IOLTA Account administrative fee. All other fees are the responsibility of, and may be charged to, the lawyer or law firm maintaining the IOLTA Account. Fees or service charges that are not "allowable reasonable fees" include, but are not limited to: the cost of check printing; deposit stamps; NSF charges; collection charges; wire transfers; and fees for cash management. Fees or charges in excess of the earnings accrued on the account for any month or quarter shall not be taken from earnings accrued on other IOLTA Accounts or from the principal of the account. Eligible financial institutions may elect to waive any or all fees on IOLTA Accounts.

(6)

A lawyer is not required independently to determine whether an interest rate is comparable to the highest rate or dividend generally available and shall be in presumptive compliance with Rule 1.15(g) by maintaining a client trust account of the type approved and authorized by the Louisiana Bar Foundation at an "eligible" financial institution.

(7)

“Unidentified Funds” are funds on deposit in an IOLTA account for at least one year that after reasonable due diligence cannot be documented as belonging to a client, a third person, or the lawyer or law firm.

(h)

A lawyer who learns of Unidentified Funds in an IOLTA account must remit the funds to the Louisiana Bar Foundation. No charge of misconduct shall attend to a lawyer’s exercise of reasonable judgment under this paragraph (h).

A lawyer who either remits funds in error or later ascertains the ownership of remitted funds may make a claim to the Louisiana Bar Foundation, which after verification of the claim will return the funds to the lawyer.

IOLTA Rules

(1)

The IOLTA program shall be a mandatory program requiring participation by lawyers and law firms, whether proprietorships, partnerships, limited liability companies or professional corporations.

(2)

The following principles shall apply to funds of clients or third persons which are held by lawyers and law firms:

(a)

No earnings on the IOLTA Accounts may be made available to or utilized by a lawyer or law firm.

(b)

Upon the request of, or with the informed consent of a client or third person, a lawyer may deposit funds of the client or third person into a non IOLTA, interest bearing client trust account and earnings may be made available to the client or third person , respectively, whenever possible upon deposited funds which are not nominal in amount or are to be held for a period of time long enough that the funds would be expected to earn income for the client or third person in excess of the costs incurred to secure such income; however, traditional lawyer client relationships do not compel lawyers either to invest such funds or to advise clients or third persons to make their funds productive.

(c)

Funds of clients or third persons which are nominal in amount or to be held for such a short period of time that the funds would not be expected to earn income for the client or third person in excess of the costs incurred to secure such income shall be retained in an IOLTA Account at an eligible financial institution as outlined above in section (g), with the interest or dividend (net of allowable reasonable fees) made payable to the Louisiana Bar Foundation, Inc., said payments to be made at least quarterly.

(d)

In determining whether the funds of a client or third person can earn income in excess of costs, a lawyer or law firm shall consider the following factors:

(1)

The amount of the funds to be deposited;

(2)

The expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held;
(3)
The rates of interest or yield at financial institutions where the funds are to be deposited;
(4)
The cost of establishing and administering non IOLTA accounts for the benefit of the client or third person including service charges, the costs of the lawyer's services, and the costs of preparing any tax reports required for income accruing to the benefit of the client or third person;
(5)
The capability of financial institutions, lawyers or law firms to calculate and pay income to individual clients or third persons;
(6)
Any other circumstances that affect the ability of the funds of the client or third person to earn a positive return for the client or third person. The determination of whether funds to be invested could be utilize
d to provide a positive net return to the client or third person rests in the sound judgment of each lawyer or law firm. The lawyer or law firm shall review its IOLTA Account at reasonable intervals to determine whether changed circumstances require further action with respect to the funds of any client or third person.
(e)
Although notification of a lawyer's participation in the IOLTA Program is not required to be given to clients or third persons whose funds are held in IOLTA Accounts, many lawyers may want to notify their clients or third persons of their participation in the program in some fashion. The Rules do not prohibit a lawyer from advising all clients or third persons of the lawyer's advancing the administration of justice in Louisiana beyond the lawyer's individual abilities in conjunction with other public spirited members of the profession. The placement
of funds of clients or third persons in an IOLTA Account is within the sole discretion of the lawyer in the exercise of the lawyer's independent professional judgment; notice to the client or third person is for informational purposes only.
(3)
The Louisiana Bar Foundation shall hold the entire beneficial interest in the interest or dividend income derived from client trust accounts in the IOLTA program. Interest or dividend earned by the program will be paid to the Louisiana Bar Foundation, Inc. to be used solely for the following purposes:
(a)
to provide legal services to the indigent and to the mentally disabled;
(b)
to provide law related educational programs for the public;
(c)
to study and support improvements to the administration of justice; and
(d)
for such other programs for the benefit of the public and the legal system of the

state as are specifically approved from time to time by the Supreme Court of Louisiana.

(4)

The Louisiana Bar Foundation shall prepare an annual report to the Supreme Court of Louisiana that summarizes IOLTA income, grants, operating expenses and any other problems arising out of administration of the IOLTA program. In addition, the Louisiana Bar Foundation shall also prepare an annual report to the Supreme Court of Louisiana that summarizes all other Foundation income, grants, operating expenses and activities, as well as any other problems which arise out of the Foundation's implementation of its corporate purposes. The Supreme Court of Louisiana shall review, study and analyze such reports and shall make recommendations to the Foundation with respect thereto.

B. Rules for Lawyer Disciplinary Enforcement (Louisiana Supreme Court Rule XIX) With amendments through January 27, 2016

Section 28. Maintenance of Trust Accounts by Lawyers; Access to Lawyers' Financial Account Records; Overdraft Notification.

A. Clearly Identified Trust Accounts in Financial Institutions Required.

(1) Lawyers who practice law in Louisiana shall deposit all funds held in trust in a bank or similar institution in this state, or elsewhere with the consent of the client or third party, in accounts clearly identified as "trust" or "escrow" accounts, referred to herein as "trust accounts," and shall take all steps necessary to inform the depository institution of the purpose and identity of the accounts. Funds held in trust include funds held in any fiduciary capacity in connection with a representation, whether as trustee, agent, guardian, exec
utor or otherwise. Lawyer trust accounts shall be maintained only in financial institutions that execute the agreement described in paragraph D below.

(2) Every lawyer engaged in the practice of law in Louisiana shall maintain and preserve for a period of at least five years, after final disposition of the underlying matter, the records, check stubs, vouchers, ledgers, journals, closing statements, accounts or other statements of disbursements rendered to clients or other parties with regard to trust funds
or similar equivalent records clearly and expressly reflecting the date, amount, source, and explanation for all receipts, withdrawals, deliveries and disbursements of the funds or other property of a client.

B. Access to Lawyers' Financial Account Records.

Every lawyer practicing or admitted to practice law in Louisiana shall, as a condition thereof, be conclusively deemed to have consented to the production by the depository institution of records of all financial accounts maintained by the lawyer in any bank or similar institution, and

the overdraft reporting requirements mandated by this rule.

C. Request for Production of Records.

A request by disciplinary counsel directed to a bank or other financial institution for production of records pursuant to this Section shall certify that the request is issued in accordance with the requirements of this Section and Section 29 of these Rules of Lawyer Disciplinary Enforcement.

D. Overdraft Notification Agreement Required.

A financial institution shall be approved as a depository for lawyer trust accounts if it files with the Board an agreement, in a form provided by the Board and approved by the Court, to report to the Office of Disciplinary Counsel whenever any properly payable instrument is presented against a lawyer trust account containing insufficient funds, irrespective of whether or not the instrument is honored. The Board shall administer securing participation of the financial institutions, and shall annually publish a list of the financial institutions that have executed overdraft notification agreements with the Board. No trust account shall be maintained in any financial institution that does not agree to so report. Any such agreement shall apply to all branches of the financial institution and shall not be cancelled except upon thirty (30) days notice in writing to the Board. Notification of trust or escrow account overdrafts shall be made in accordance with La. R. S. 6:332 and La. R. S. 6:333(F)(16).

Section 29. Verification of Financial Accounts.

A.

Generally.

Whenever disciplinary counsel has probable cause to believe that financial accounts of a lawyer that contain, should contain, or have contained funds belonging to clients or third parties have not been properly maintained or that the funds have not been properly handled, disciplinary counsel shall request the approval of the chair of a hearing committee selected in order from the roster established by the board to initiate an investigation for the purpose of verifying the accuracy and integrity of all accounts maintained by the lawyer in any bank or similar institution. If the reviewing member approves, counsel shall proceed to verify the accuracy of the financial accounts. If the reviewing member denies approval, counsel may submit the request for approval to one other chair of a hearing committee selected in order from the roster established by the board.

B. Confidentiality.

Investigations, examinations, and verifications shall be conducted so as to preserve the private and confidential nature of the lawyer's records insofar as is consistent with these rules and the lawyer client privilege.

Appendix F to Disciplinary Rules: Supreme Court of Louisiana Trust Account Disclosure & Overdraft Notification Authorization

Pursuant to the inherent, plenary and Constitutional authority of the Louisiana Supreme Court to regulate the practice of law, and in accordance with Supreme Court Rule XIX, every attorney

licensed to and engaged in the practice law in Louisiana is required to disclose the existence of a trust or escrow account (or declare that because of the nature of his/her practice that he/she is not required to maintain such an account). Every attorney who maintains a trust or escrow account as required by the Rules of Professional Conduct is required to maintain such account with a federally insured financial institution with whom the attorney has executed an agreement which authorizes the financial institution to provide written or electronic notification to the Office of Disciplinary Counsel of any account overdraft. Use of this form complies with the rules of the Louisiana Supreme Court.

C. From the Trust Account Disclosure & Overdraft Notification Authorization Form:

A. All attorneys holding funds of clients or third persons must maintain a separate account for such funds (commonly referred to a trust or escrow account);

B. Every attorney maintaining a qualified pooled trust or escrow account must participate in the
Interest on Lawyers Trust Account (IOLTA) Program administered by the Louisiana Bar Foundation; and

C. All attorneys who are required to maintain trust or escrow accounts must do so with federally insured financial institutions with which they have executed agreements requiring the financial institutions to provide to the Office of Disciplinary Counsel written or electronic notification of any overdraft incident created on such accounts.

(Notice to Financial Institution:
Pursuant to Legislative Act 249 of the 2005 Regular Session, notice to the Office of Disciplinary Counsel shall be issued after five (5) business days have passed from the date of notice to the attorney, and whether or not the account remains in overdraft status; but such notice will not issue where the overdraft was created solely by bank charges imposed or when charges are imposed through bank error. Costs associated with providing this notice may be charged to the attorney and deducted from the interest created on the trust or escrow account. The act provides that no civil or criminal action may be based upon a disclosure or non-disclosure of financial records made pursuant to the Act.)

SESSION 5

MMA

28th Cutting Edge Entertainment Law Seminar

The Pandemic REDUX

LIVE and Online

“Mechanicals and Performances under the Music Modernization Act”

By Jeff Brabec and Todd Brabec

In 2018, Congress passed and the President signed into law the Orrin G. Hatch-Bob Goodlatte Music Modernization Act. The Act primarily deals with the areas of the mechanical licensing of downloads and streaming (the Musical Works Modernization Act), the status of pre-1972 sound recordings (the Classics Protection and Access Act) and the ability of producers, mixers and sound engineers to receive royalties under the section 114 statutory license for sound recordings (the Allocation for Music Producers Act). This article will focus on the Musical Works Modernization Act and its significance to songwriters, composers, music publishers, digital music providers and performing rights organizations (PROs).

Mechanical Royalties and the Mechanical Licensing Collective

One of the major growth areas in the music business are the mechanical royalties due music publishers (on behalf of themselves and the songwriters, composers and lyricists that they represent) from audio performances of musical works on the various interactive streaming services. These are the services where the consumer can select the performance of a specific recording of a composition such as Spotify, Amazon, Apple, Google and, to some degree, Pandora.

Unlike the statutory mechanical download rate of 9.1 cents (or 1.75 cents per minute if a composition is longer than five minutes) established by the Copyright Royalty Board (the “CRB”) for the years 2018 through 2022, the calculation of the mechanical royalty rate for interactive streaming is much more complicated since it is based on a combination of factors including the revenue to the service, the costs that the services pay for licensing the master recordings of the compositions, the number of subscribers if a subscriber funded service, the type of offering and the amount of monies paid to the performing rights organizations such as ASCAP, BMI, SESAC and GMR (since these latter monies are deducted from the overall pool to arrive at the payable mechanical royalty pool). In fact, just to give an example of the complexity of the rate calculation, the royalty statement from one of the services has line items from A to Z (the entire alphabet) which are all part of how the service arrived at a final “per play” mechanical royalty number for a particular quarter.

After a two year hearing process including a trial, the CRB in January of 2018, made its determination of what the mechanical royalty rates for interactive streaming services would be for the five year period from 2018 through 2022. In its simplest form, the rate for an ad supported service would be the greater of a percentage of the service’s revenue or a percentage of the cost to the service of licensing the master recordings (the “Total Content Costs” or “TTC”). If the service was subscription supported vs. ad supported, the number of subscriptions multiplied by a per subscriber rate was also introduced into the equation. Once this was arrived at, the aggregate performance right royalties payable to the performing rights organizations (the “PROs”) would be deducted and the result would be the aggregate mechanical royalty pool which would be distributed on the basis of those compositions which were played during a specific calendar quarter based on the number of actual plays.

For informational purposes, the percent of all-in revenue rates under the CRB’s so called “ Final Determination” started at 11.4% in 2018 and increased on an annual basis to 12.3% in 2019, 13.3% in 2020, 14.2% in 2021 until it finally reached 15.1% in 2022. The percent of Total Content Costs started at 22.0% in 2018 and increased on an annual basis to 23.1% in 2019,

24.1% in 2020, 25.2% in 2021 and 26.2% in 2022. These rates represented an approximate 44% increase in rates over the five year period.

The above Final Determination of the CRB was appealed by Amazon Digital Services LLC, Google LLC, Pandora Media, LLC and Spotify USA Inc. It should be noted that Apple did not participate in the appeal with the other major digital services.. The appeal was argued on March 10, 2020 in the United States District Court of Appeals for the District of Columbia Circuit and on August 7, 2020 the Court vacated certain aspects and remanded those matters back to the CRB for further proceedings with respect to a number of issues including the lack of adequate notice to the streaming services with respect to the Board's decision to uncap the TTC as well as the Board's failure to provide fair notice of the rate structure it adopted and the need for a fuller explanation of the Board's Service Revenue definition for bundled offerings (that is, offerings that contain an additional product or products in addition to the music aspect). The court also remanded the issue of why the prior rates were not used by the CRB as a benchmark for the newly adopted mechanical rates.

Regardless of the future outcome of the remanded proceedings, it should be noted that the Music Modernization Act provided that a new non-profit organization be established that would be responsible for the issuance and management of blanket mechanical licenses to the digital services, the collection of the interactive mechanical streaming royalties and the payment of such royalties to the owners of the musical compositions that were performed on the interactive streaming services. In addition, this organization was given the responsibility of building a publicly accessible data base containing detailed information on the ownership and other relevant data which would help in identifying the rights owners of the musical compositions that were being performed by the various digital services to ensure that streaming mechanical royalties would be paid to the proper parties.

Another extremely important role and duty of this new organization was to help find the proper owners of unmatched royalties (monies that are payable for licensed uses but, for one reason or another, the person or entity due those royalties cannot be identified). This aspect covers both monies that have been held by the digital service companies over the years due to lack of information as to ownership, etc. and monies that will be generated for future uses of musical compositions utilized by the services that cannot be properly matched.

After a review by the United States Copyright Office, the Mechanical Licensing Collective (the "MLC") was selected as the organization to carry out the above functions. This organization, per the Music Modernization Act, is totally funded by the digital service companies so that all royalties distributed to copyright owners and those that they represent will be commission free. For reference with respect to said funding, the Copyright Royalty Judges provided that the initial Start Up Assessment to the digital services would be $33,500,000.00 with an assessment for 2021 of $28,500,000.00. For the calendar year 2022 and all subsequent years, the amount of the Annual Assessment will be automatically adjusted by increasing the amount of the Annual Assessment of the preceding calendar year by the lesser of (a) 3 percent; and (b) the percentage change in the ECI (the Employment Cost Index for Total Compensation as published on the website of the United States Department of Labor, Bureau of Labor Statistics for the most recent 12 month period for which data are available on the date that is 60 days prior to the start of the calendar year).

As to overall makeup of the MLC. it has a board of directors comprised of ten music publishers (both major and indie publishers) and four self-published songwriters as well as three non-voting board members who represent the major songwriter organizations, the major music publisher

organization (the NMPA) and the major digital services. It also has advisory committees for unclaimed royalty oversight, dispute resolution and operations (all of which are comprised of songwriters and indie and/or self-administered music publisher representatives). The MLC is scheduled to become operational on January 1, 2021.

ASCAP and BMI Consent Decrees and Rate Courts

There are four primary performing rights organizations (PROs) in the United States. They are the American Society of Composers, Authors and Publishers (ASCAP), a writer/publisher non-profit association founded in 1914, Broadcast Music Inc. (BMI), a broadcaster owned not for profit corporation organized in 1939, SESAC, a for-profit corporation originally founded in 1930 and Global Music Rights (GMR), a for profit corporation organized in 2013. Songwriters, composers and music publishers join or affiliate with these organizations who in turn negotiate licenses with the users of music (e.g. television stations, streaming services, concert halls, etc.), collect the fees and distribute the money back to writers and publishers based on each organization's payment and distribution rules. There is a PRO in practically every country in the world where, via reciprocal agreements with ASCAP, BMI, GMR and SESAC, U.S. writers' and publishers" works are represented and paid for when performances occur in foreign countries.

The worldwide annual revenue of the Performance Right is in excess of 10 billion dollars with ASCAP, BMI, GMR and SESAC accounting for approximately $3 billion dollars of that annual total. In the U.S., both ASCAP and BMI have annual receipts in the area of $1.3 billion dollars each with the major revenue sources being broadcast and cable television, online/digital including audio and audio visual streaming services, traditional radio and satellite, general (live concerts, bars, universities, restaurants, etc.) and incoming royalties from foreign countries.

In the case of ASCAP and BMI, both entered into Consent Decrees with the federal government in 1941, with amendments to those Decrees in 1950, 1960 and 2001 in the case of ASCAP, and amendments in 1966 and 1994 in the case of BMI. These Decrees regulate, to a certain extant, the activities and licensing practices of both ASCAP and BMI. One aspect of these Decrees, which has had a significant effect on the determination of license fees and subsequent royalty payments to writers and publishers, is the existence of a separate "Rate Court" for ASCAP and BMI, which comes into play when the PRO and a music user cannot come to a negotiated agreement as to what "reasonable" license fees should be in any given area. The Decrees allow any party to apply to the U.S. District Court for the Southern District of New York for a determination of interim and final fees. A specific judge is assigned for life to all cases involving ASCAP with a different judge assigned to handle BMI matters. These Rate Courts have been in existence with ASCAP since 1950 and with BMI since 1994 and practically all of their rulings and decisions have involved the determination of fees and license terms for the traditional media areas of radio and broadcast and cable television. Commencing with the 2007 AOL/RealNetworks/Yahoo case though, most of the filings, hearings and decisions have involved the online/digital community including YouTube, AT&T Mobility, Verizon Wireless, Spotify, DMX, MobiTV, Netflix and Pandora, among others.

Provisions of the Musical Works Modernization Act addressed two major issues involving the Rate Court process-the first had to do with the federal court judges overseeing the Decrees and the Rate Courts with the second involving the permissible evidence allowed in any rate court

proceeding. As was mentioned before, a specific judge oversees the ASCAP Decree with another specific judge overseeing the BMI Decree. Up until the passage of the Music Modernization Act, these specific judges were the only ones who could handle Rate Court cases and the determination of “reasonable license fees. The Act created a “wheel” of Southern District Court judges where cases would be assigned on a rotating basis rather than always to same judge. A second major issue involved the inability of ASCAP or BMI from introducing evidence of sound recording label and artist rates in any proceeding. The Act repeals Section 114 (i) of the Copyright Act which prohibited the introduction of such evidence. In the future, sound recording rates can be taken into consideration when determining the musical composition rates.

Summary

Since the passage of the 1976 Copyright Revision Act, the major legislative efforts regarding music have been the Digital Performance Right in Sound Recordings Act of 1995, the Digital Millennium Copyright Act of 1998 and the Sony Bono Copyright Term Extension Act of 1998. The Music Modernization Act joins them as a significant positive step for songwriters and composers,, music publishers, recording artists, labels, producers and the businesses that use music.

SESSION 6
ETHICS

28th Cutting Edge Entertainment Law Seminar

The Pandemic REDUX
LIVE and Online

CUTTING EDGE ENTERTAINMENT LAW CONFERENCE
August 22-24th, 2019

Attorney Ethics and Professionalism-CLE OUTLINE: Professionalism and the Ornery Opponent:

David A. Dalia
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New Orleans, LA 70112
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With Judith A. DeFraites and David A. Dalia

Dedicated to Vernon P. Thomas, Esq., a truly great man.

OUTLINE

I. Some Louisiana Supreme Court disciplinary cases- August 2018 - July 2019
II. Pertinent Disciplinary Rules
III. Professional Rules Governing Escrow Accounts

TEXT

I. Some Louisiana Supreme Court disciplinary cases- August 2018 - July 2019

"IN RE: M G. S
NO. 2019-B-0908
SUPREME COURT OF LOUISIANA
June 26, 2019..." In re S (La., 2019)

Motion filed by the Office of Disciplinary Counsel ("ODC") against respondent, M G. S. The motion seeks to revoke respondent's probation and make the previously-deferred portion of his suspension executory based on allegations that respondent failed to comply with the conditions of probation imposed in In re: S, 17-1043 (La. 10/16/17), 226 So. 3d 1102 ("S I").

The record in S I demonstrated that respondent mismanaged his client trust account, neglected a legal matter, failed to communicate with a client, and failed to cooperate with the ODC in two

investigations. For this misconduct, the court suspended respondent from the practice of law for one year and one day, with all but sixty days deferred, followed by a two-year period of supervised probation with the following conditions: (1) respondent shall successfully complete Trust Accounting School; (2) respondent shall successfully complete Ethics School; and:

(3) respondent shall provide the ODC with quarterly audits of his client trust account.

The ODC alleged that respondent failed to submit quarterly audits of his client trust account, as required by his probation agreement.

After a hearing, at which respondent failed to appear, the disciplinary board concluded that respondent failed to comply with the terms and conditions of his probation by failing to provide the ODC with the name of a CPA for approval and by failing to provide any quarterly audits of his client trust account as required by the court's order in S I a.

"DECREE

For the reasons assigned, respondent's probation is revoked and the previously-deferred portion of the one year and one day suspension imposed in In re: S, 17-1043 (La. 10/16/17), 226 So. 3d 1102, is hereby made immediately executory." In re S (La., 2019)

"IN RE: P. G.
NO. 2018-B-1646
SUPREME COURT OF LOUISIANA
June 26, 2019
ATTORNEY DISCIPLINARY PROCEEDING..." In re G (La., 2019)

"On February 3, 2016, the ODC received an overdraft notice regarding a November 23, 2015 overdraft in respondent's client trust account. The overdraft resulted from respondent's attempt to pay a third-party medical provider for services rendered to a client who had no funds in the trust account." In re G (La., 2019)

Thereafter, the ODC's forensic auditor conducted an audit of respondent's trust account for the period of August 1, 2015 through January 31, 2016. The audit revealed that respondent regularly paid non-client expenses and made cash withdrawals from his trust account; these non-client expenses and cash withdrawals totaled $33,219.33 during the audit period. The audit also revealed that, on January 31, 2016, the trust account balance to satisfy pending client expenditures should have been at least $16,345.62. Instead, the balance on that date was $3,235.61, resulting in a deficit of $13,110.01.

On March 17, 2016, respondent informed the ODC that he was addicted to OxyContin, explaining that "the cost of the medication coupled with its effects on me overwhelmed my finances and I eventually began to take money from my Trust account." He also informed the

ODC that he had contacted the Judges and Lawyers Assistance Program ("JLAP") and was preparing to enter inpatient treatment. He further informed the ODC that "I have also gone through my files and paid all outstanding debts that had been previously withheld from client settlements." This last statement was confirmed by the ODC's audit of respondent's trust account. Finally, during his October 26, 2016 sworn statement to the ODC, respondent admitted that he regularly used his trust account as a second operating account in 2015.

On July 7, 2016, respondent completed a ninety-day inpatient treatment program at Palmetto Addiction Recovery Center. Palmetto's medical director diagnosed respondent with severe opioid use disorder, among other diagnoses. On July 12, 2016, respondent signed a five-year JLAP recovery agreement.

Regarding mitigating factors, the committee noted that the ODC had stipulated to the following: absence of a prior disciplinary record, timely good faith effort to make restitution or to rectify the consequences of the misconduct, and full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings.

In light of the above findings, the committee recommended respondent be suspended from the practice of law for one year and one day, fully deferred, subject to the following conditions:...

1. Respondent shall continue to be bound by the terms of his JLAP recovery agreement for at least two years;

2. Respondent shall obtain regular audits of his trust account, to be performed by a CPA approved by the ODC;

3. Respondent shall submit the findings of the audits on a quarterly basis to the ODC for two years;

4. Respondent shall take at least six hours of continuing legal education in the area of law office practice/client trust account management; and

5. Respondent shall successfully complete the Louisiana State Bar Association's Trust Accounting School within one year.

The ODC objected to the leniency of the committee's recommended sanction, arguing that the period of deferment is not supported by the record.

"The board recognized the sole aggravating factor of multiple offenses." In re Giraud (La., 2019) "Based on this reasoning, we will suspend respondent from the practice of law for one year and one day, with all but six months deferred, subject to two years of probation with the conditions set forth in the board's report,..."

IN RE: J F. O, JR.
NO. 2019-OB-0985
SUPREME COURT OF LOUISIANA
June 26, 2019

ORDER

The Office of Disciplinary Counsel ("ODC") filed formal charges against respondent, alleging that he failed to file federal tax returns on behalf of his law firm and failed to remit funds withheld from his employees' paychecks to the federal government. Respondent now seeks to permanently resign from the practice of law in lieu of discipline. The ODC has concurred in respondent's petition.

IT IS FURTHER ORDERED that J F. O. Jr. shall be permanently prohibited from practicing law in Louisiana or in any other jurisdiction in which he is admitted to the practice of law; shall be permanently prohibited from seeking readmission to the practice of law in this state or in any other jurisdiction in which he is admitted; and shall be permanently prohibited from seeking admission to the practice of law in any jurisdiction.

IN RE: T A. H
NO. 2019-B-0827
SUPREME COURT OF LOUISIANA
June 17, 2019
ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

Respondent, T A. H, was arrested for alcohol-related misconduct on four occasions, three of which involved driving while intoxicated. For this misconduct, we accepted a joint petition for consent discipline filed by respondent and the Office of Disciplinary Counsel ("ODC") and suspended respondent for a period of one year and one day, with all but six months deferred, subject to a period of probation to coincide with respondent's recovery agreement with the Judges and Lawyers Assistance Program ("JLAP").1 In re: H, 17-0726 (La. 9/15/17), 224 So. 3d 963

IN RE: A D P
NO. 2019-B-0901

SUPREME COURT OF LOUISIANA
June 17, 2019
ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

The Office of Disciplinary Counsel ("ODC") commenced an investigation into allegations that respondent neglected a legal matter, failed to communicate with a client, and engaged in a personal relationship with a current client. Following the filing of formal charges, respondent and the ODC submitted a joint petition for consent discipline in which respondent admitted that his conduct violated Rules 1.3, 1.4(a)(3), 1.7, and 8.4(a) of the Rules of Professional Conduct. Having reviewed the petition,

IT IS ORDERED that the Petition for Consent Discipline be accepted and that A D P, Louisiana Bar Roll number 25815, be and he hereby is suspended from the practice of law for a period of one year.

IT IS FURTHER ORDERED that all costs and expenses in the matter are assessed against respondent in accordance with Supreme Court Rule XIX, § 10.1, with legal interest to commence thirty days from the date of finality of this court's judgment until paid.

IN RE: K L J
No. 2019-B-0653
SUPREME COURT OF LOUISIANA
June 3, 2019
ATTORNEY DISCIPLINARY PROCEEDING

Crichton, J., would reject the petition for consent discipline.

I dissent from the per curiam, because, in my view, the discipline of one year and one day, with only thirty days deferred, is too lenient. Respondent herself stipulated that she as grossly negligent in the mismanagement of her client trust account. Further, I find respondent's failures to respond the Office of Disciplinary Counsel in its investigations of that mismanagement to be egregious.

With respect to Count I, Respondent initially failed to respond to the ODC's notice of a June 2017 overdraft of her client trust account. After ODC issued a formal complaint, respondent submitted a request for an extension of time to respond, but the account was again overdrawn. She was then sent notice of the second overdraft, but failed to respond to that notice, requiring the ODC to send a second request for a response. At that point, by now months later in October 2017, respondent again requested another extension of time. The ODC granted her that courtesy, but she again failed to respond. After a third request for a response from the ODC, respondent provided some materials, but it was incomplete. Thus, ODC had to request additional documentation, leading to a similar circle of events in which respondent again requested additional time, which was granted by ODC, but did not submit the supplemental materials.

IN RE: G C
NO. 2019-B-0406
SUPREME COURT OF LOUISIANA

June 3, 2019
ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

Respondent, G C, engaged in a conflict of interest. For this misconduct, we suspended respondent for a period of six months, with all but thirty days deferred, subject to one year of unsupervised probation. In re: C, 18-1076 (La. 12/5/18), 2018 WL 6390368 ("C I"). Respondent did not file a request for a rehearing, and the order of suspension became final and effective on December 20, 2018. In the instant matter, the Office of Disciplinary Counsel ("ODC") seeks to make the deferred suspension executory, based upon allegations that respondent engaged in the unauthorized practice of law during his suspension and made false representations in his affidavit for reinstatement.

UNDERLYING FACTS AND PROCEDURAL HISTORY

On February 8, 2019, respondent telephoned the ODC to discuss his probation. Both during this telephone call and thereafter in writing, respondent admitted that he regularly engaged in the practice of law after the effective date of his suspension.

The ODC has verified numerous actions taken by respondent during his suspension which constitute the practice of law:...

We agree that these circumstances constitute misconduct. Although the ODC has requested that that the previously-deferred portion of the suspension be made executory, we find no evidence that respondent has served any part of the active portion of his suspension. To the contrary, the record reveals respondent continued to practice law between the finality of our decree on December 20, 2018 through January 31, 2019. Accordingly, we will make the entire six-month suspension imposed in C I immediately executory, to commence from the date of this decree.

WHAT WAS THE CONFLICT OF INTEREST?:

IN RE: G C
NO. 2018-B-1076
SUPREME COURT OF LOUISIANA
December 5, 2018
ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel ("ODC") against respondent, G C, an attorney licensed to practice law in Louisiana.

UNDERLYING FACTS

In February 2016, Cedric Duncan and his sisters, Pamelian Norwood and Angela Freeman, hired respondent to handle the succession of their mother, Ethel Duncan, who died intestate on February 11, 2016. Respondent charged a flat fee of $1,800, and the siblings agreed to split the fee three ways. Respondent was paid the entire $1,800 and provided Cedric with a receipt for $600. Nevertheless, respondent claimed he never received any money directly from Cedric, asserting that Angela paid Cedric's portion of the fee.

The petition for possession respondent prepared and filed excluded Cedric as an heir to Ethel's estate. Respondent claimed Pamelian and Angela told him Cedric no longer wished to be a part of the succession. However, respondent never verified this with Cedric. In June 2016, the judge signed the judgment of possession splitting Ethel's property equally between Pamelian and Angela.

When Cedric received a copy of the judgment of possession, he hired attorney Kristina Shapiro to reopen the succession, paying her $3,000 for the representation.

Ms. Shapiro filed a petition to annul the judgment of possession and for damages, naming Pamelian, Angela, and respondent as defendants. Ms. Shapiro also filed a motion to reopen the succession.

Respondent filed an answer to the petition to annul the judgment of possession and for damages on behalf of Pamelian, Angela, and himself. Respondent also appeared at the December 1, 2016 hearing to reopen the succession and argued on behalf of Pamelian and Angela. The judge reopened the succession and named Cedric as the administrator. Shortly thereafter, respondent withdrew from the representation of Pamelian and Angela.

[See Disciplinary Proceedings in this case above]

IN RE: C J. W
NO. 2019-B-0663
SUPREME COURT OF LOUISIANA
June 3, 2019
ATTORNEY DISCIPLINARY PROCEEDINGS

PER CURIAM

The Office of Disciplinary Counsel ("ODC") commenced an investigation into allegations that respondent committed serious attorney misconduct, including neglect of his clients' legal matters, failure to communicate with his clients, failure to refund unearned fees, failure to placed advanced deposits for costs and expenses into his client trust account, and failure to return his clients' files upon the termination of the representation. Respondent also practiced law while he was ineligible to do so, failed to cooperate with the ODC in its investigation, and was charged with issuing worthless checks. Following the filing of formal charges, respondent and the ODC submitted a joint petition for consent discipline. Having reviewed the petition,

IT IS ORDERED that the Petition for Consent Discipline be accepted and that C J. W, Louisiana Bar Roll number 29017, be suspended from the practice of law for a period of three years, which suspension commences from the effective date of this order.

IT IS FURTHER ORDERED that respondent shall make full restitution to all clients to whom refunds are owed.

IT IS FURTHER ORDERED that all costs and expenses in the matter are assessed against respondent..

IN RE: M. F
NO. 2018-B-1483
SUPREME COURT OF LOUISIANA
May 28, 2019
ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

Pursuant to Supreme Court Rule XIX, § 21, the Office of Disciplinary Counsel ("ODC") has filed a petition seeking the imposition of reciprocal discipline against respondent, M R. F, an attorney licensed to practice law in Louisiana, Tennessee, and Colorado, based upon discipline imposed by the Supreme Court of Colorado.

UNDERLYING FACTS AND PROCEDURAL HISTORY

In 1987, respondent maintained a law office in Denver, Colorado, wherein he accepted new legal cases and collected retainers until October 21, 1987. On October 23, 1987, respondent essentially abandoned his law practice when he moved to Ireland without notice to most of his clients. Thereafter, respondent failed to file his 1988 annual registration statement or pay the $90 registration fee.

Seven of respondent's clients filed grievances with the Colorado Disciplinary Counsel. Respondent failed to appear and answer a multiple count disciplinary complaint. The Supreme Court of Colorado ultimately found that respondent abandoned his law practice, converted his clients' funds to his own use, and failed to cooperate in the disciplinary proceedings. For this misconduct, the Supreme Court of Colorado disbarred1 respondent and ordered him to make restitution to the seven clients in the total amount of $14,750.36.

After receiving notice of the Colorado order of discipline on January 27, 2017, the ODC filed a motion to initiate reciprocal discipline proceedings in Louisiana, pursuant to Supreme Court Rule XIX, § 21. A copy of the Final Judgment and Order issued by the Supreme Court of Colorado was attached to the motion.

On September 7, 2018, this court rendered an order giving respondent thirty days to demonstrate why the imposition of identical discipline in this state would be unwarranted. Respondent did not file a response to the court's order.

DISCUSSION

The standard for imposition of discipline on a reciprocal basis is set forth in Supreme Court Rule XIX, § 21(D). That rule provides:

> Discipline to be Imposed. Upon the expiration of thirty days from service of the notice pursuant to the provisions of paragraph B, this court shall impose the identical discipline ... unless disciplinary counsel or the lawyer demonstrates, or this court finds that it clearly appears upon the face of the record from which the discipline is predicated, that:
>
> (1) The procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
> (2) Based on the record created by the jurisdiction that imposed the discipline, there was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the court could not, consistent with its duty, accept as final the conclusion on that subject; or
> (3) The imposition of the same discipline by the court would result in grave injustice or be offensive to the public policy of the jurisdiction; or
> (4) The misconduct established warrants substantially different discipline in this state;
> If this court determines that any of those elements exists, this court shall enter such other order as it deems appropriate. The burden is on the party seeking different discipline in this jurisdiction to demonstrate that the imposition of the same discipline is not appropriate.

In the instant case, respondent has made no showing of infirmities in the Colorado proceeding, nor do we discern any from our review of the record. Furthermore, we find there is no reason to deviate from the sanction imposed in Colorado as only under extraordinary circumstances should there be a significant variance from the sanction imposed by the other jurisdiction. In re: Aulston, 05-1546 (La. 1/13/06), 918 So. 2d 461. See also In re Zdravkovich, 831 A.2d 964, 968-69 (D.C. 2003) ("there is merit in according deference, for its own sake, to the actions of other jurisdictions with respect to the attorneys over whom we share supervisory authority").

Under these circumstances, it is appropriate to defer to the Colorado judgment imposing discipline upon respondent. Accordingly, we will impose reciprocal discipline in the form of disbarment.

Footnotes:

1. According to the Colorado Rules of Civil Procedure, Rule 251.6(a), disbarment is the revocation of an attorney's license to practice law in the state for at least eight years, subject to readmission as provided by Rule 251.29(a), which provides in pertinent part that "[a] disbarred attorney may not apply for readmission until at least eight years after the effective date of the

order of disbarment."...
In re Franks (La., 2019)

BAR FORGIVENESS IS POSSIBLE:

IN RE: S J. H
NO. 2019-OB-0459
SUPREME COURT OF LOUISIANA
May 20, 2019
ON APPLICATION FOR REINSTATEMENT

PER CURIAM

This proceeding arises out of an application for reinstatement to the practice of law filed by petitioner, S J. H, a suspended attorney.

UNDERLYING FACTS AND PROCEDURAL HISTORY

In May 2001, petitioner was arrested and charged with driving while intoxicated ("DWI"), speeding, and improper lane usage. Ultimately, the DWI charge was dismissed, and petitioner pleaded guilty to the traffic charges.

In September 2001, petitioner vandalized a truck belonging to his ex-wife's boyfriend while it was parked at his ex-wife's home. He was arrested and charged with simple criminal damage to property and violation of a restraining order. He was also cited for failure to yield to an emergency vehicle for refusing to stop his car when the police ordered him to do so.

In December 2002, petitioner was arrested and charged with DWI second offense, hit and run, disobeying a red light, reckless driving, and failing to maintain proof of insurance. In February 2005, petitioner pleaded guilty to failing to report an accident, disobeying a red light, and reckless driving. In June 2005, the record of petitioner's arrest was expunged.

In June 2005, petitioner gave a sworn statement to the Office of Disciplinary Counsel ("ODC") regarding the three matters set forth above. In response to the ODC's questions, petitioner asserted his Fifth Amendment privilege against self-incrimination. The ODC insisted that he answer on the ground that all criminal charges against him had either been declined or resolved via plea agreement. Nevertheless, petitioner continued to refuse to answer, thereby failing to cooperate with the ODC's investigation.

For the above misconduct, we suspended petitioner from the practice of law for three years. In re: H, 09-0116 (La. 6/26/09), 15 So. 3d 82.

In June 2015, petitioner pleaded no contest to domestic abuse battery. In May 2016, we

accepted a joint petition for consent discipline filed by petitioner and the ODC and suspended petitioner from the practice of law for one year. In re: H, 16-0686 (La. 5/27/16), 193 So. 3d 124.

In August 2018, petitioner filed an application for reinstatement with the disciplinary board, alleging he has complied with the reinstatement criteria set forth in Supreme Court Rule XIX, § 24(E). The ODC took no position regarding the application for reinstatement. Accordingly, the matter was referred for a formal hearing before a hearing committee.

Following the hearing, the hearing committee recommended that petitioner be reinstated to the practice of law on a conditional basis for one year, subject to the following conditions:

1. Petitioner shall continue diagnostic monitoring with JLAP during the one-year probationary period. If his JLAP diagnostic monitoring agreement terminates by its own terms during the probationary period, then he shall execute a new agreement to satisfy this condition;

2. Petitioner shall maintain good standing pursuant to his JLAP agreement;

3. Petitioner shall maintain compliance with the Rules of Professional Conduct;

4. Petitioner shall cooperate with the ODC in the event of an inquiry as to his fitness to practice law; and

5. Petitioner shall satisfy all requirements to practice law pursuant to the rules governing attorneys in the State of Louisiana.

Neither petitioner nor the ODC objected to the hearing committee's recommendation.

DISCUSSION

After considering the record in its entirety, we find petitioner has met his burden of proving that he is entitled to be reinstated to the practice of law on a conditional basis. Accordingly, we will order that petitioner be reinstated to the practice of law, subject to a one-year period of probation governed by all of the conditions recommended by the hearing committee.
In re H (La., 2019)

IN RE: Y J K
NO. 2019-B-0356
SUPREME COURT OF LOUISIANA
May 20, 2019
ATTORNEY DISCIPLINARY PROCEEDING

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel ("ODC") against respondent, Y J K, an attorney licensed to practice law in Louisiana

but currently on interim suspension based upon her conviction of a serious crime. In re: K, 16-0331 (La. 3/14/16), 186 So. 3d 649 (Johnson, C.J., recused).

UNDERLYING FACTS

In February 2013, respondent qualified to run for Orleans Parish Juvenile Court, representing in her qualifying documents that she was domiciled in Orleans Parish. Respondent subsequently prevailed in a runoff election. In March 2014, a grand jury in Orleans Parish indicted respondent on two felony criminal charges arising out of allegations that she was actually domiciled in St. Tammany Parish and that she made false representations about her domicile when she qualified to run for judicial office.

Following the indictment, this court disqualified respondent from exercising any judicial function during the pendency of further proceedings. In re: K, 14-0924 (La. 5/15/14), 140 So. 3d 711 (Johnson, C.J., recused). Prior to a final adjudication of the judicial discipline matter against respondent, she lost the status of a judge when she was defeated in the fall 2014 elections. As a result, the ODC assumed jurisdiction over respondent.

In November 2015, a jury found respondent guilty of both counts of the indictment. She was sentenced in February 2016 to a suspended jail sentence and probation.

Thereafter, respondent filed a motion for an out of time appeal of her criminal conviction, which motion was granted. The court of appeal then remanded the case to the trial court with instructions to conduct an evidentiary hearing on a claim of ineffective assistance of counsel. State v. K, 17-0123 (La. App. 4th Cir. 10/27/17), 231 So. 3d 110.

Following remand, on December 18, 2017, respondent entered into a plea agreement, whereby the original convictions were vacated. In exchange, respondent pleaded guilty to a misdemeanor violation of La. R.S. 18:1461.3(C)(4) (disobeying any lawful instruction of a registrar, deputy registrar, or commissioner).1

DISCIPLINARY PROCEEDINGS

In March 2016, the ODC filed formal charges against respondent, alleging that her conduct violated the following provisions of the Rules of Professional Conduct: Rules 8.4(a) (violation of the Rules of Professional Conduct), 8.4(b)

(commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

Respondent initially failed to answer the formal charges, and the factual allegations contained therein were deemed admitted and proven by clear and convincing evidence. Eight months later, respondent, through counsel, filed an unopposed motion to recall the deemed

admitted order. She also sought a stay of the formal charge proceedings pending her criminal appeal. The motion and request for a stay were granted, and the deemed admitted order was recalled.
In re K (La., 2019)

In her submission, respondent indicated that she is the sole caregiver for her eighty-eight year old mother and fifty-six year old brother, both of whom are disabled and in need of constant care. After respondent's sister passed away in November 2015, respondent moved to Atlanta, Georgia to take care of them. In May 2018, respondent was forced to move with them back to Louisiana due to financial hardship. During the process, they have been without any home healthcare or transportation assistance services.

Respondent argued that she possesses good character and reputation. In support, she submitted three character reference letters as well as a transcript of her deposition, wherein she testified about her lifetime involvement in church and volunteer work with various juvenile agencies.

Respondent suggested that this matter is guided by the court's ruling in In re: Richmond, 08-0742 (La. 12/2/08), 996 So. 2d 282, wherein an attorney was found to have knowingly made false statements under oath regarding his domicile when he qualified as a candidate for public office. For his misconduct, the court suspended the attorney for six months, and in light of the mitigating factors present, deferred all but sixty days of the suspension. Respondent indicated that a similar sanction would be appropriate here, although, unlike Mr. Richmond, respondent did not occupy a position of public trust at the time of her conduct.2 Respondent requested that any sanction be made retroactive to the date of her interim suspension, and requested that all costs and expenses associated with this proceeding be waived as she has been unemployed since December 2015.

In its submission on sanction, the ODC indicated that it could not stipulate to the presence of "personal problems" as a mitigating factor, inasmuch as there appeared to be no correlation between the acts of dishonesty by respondent in falsifying her domicile in the qualifying process and her mother's health problems and her brother's care needs. The ODC agreed that this matter is guided by Richmond, but noted that unlike respondent, Mr. Richmond was not criminally prosecuted for his conduct. The ODC suggested that respondent be suspended from the practice of law for one year, retroactive to the date of her interim suspension.

Hearing Committee Report

After considering the record, the hearing committee made factual findings consistent with the underlying facts set forth above. Based on those facts, the committee determined respondent violated the Rules of Professional Conduct as alleged in the formal charges.

The committee determined that respondent violated duties owed to the public of this State. Her actions were knowing and intentional when she falsified her domicile in an attempt to be

elected as a juvenile court judge in Orleans Parish. Her actions caused harm to the public's trust in individuals seeking a position such as a judgeship. Respondent admitted that her behavior caused an undue burden on the legal system and shed a "negative light on the judiciary and legal profession." After considering the ABA's Standards for Imposing Lawyer Sanctions, the committee determined the baseline sanction is suspension.

Upon review of the findings and recommendations of the hearing committee and disciplinary board, and considering the record, it is ordered that Y J K, Louisiana Bar Roll number 22096, be and she hereby is suspended from the practice of law for a period of one year, retroactive to March 14, 2016, the date of her interim suspension.

II. Pertinent Disciplinary Rules:

A. Louisiana Rules of Professional Conduct With amendments through July1, 2016:

Rule 1.15.
Safekeeping Property
(a)
A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. ...*[holding of client funds, see III, Escrow Section, below...]*... Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

Rule 3.2.
Expediting Litigation
A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Rule 3.4.
Fairness to Opposing Party and Counsel
A lawyer shall not:
(a)
unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;
(b)
falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
(c)

knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists;
(d)
in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;
(e)
in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or
(f)
request a person other than a client to refrain from voluntarily giving relevant information to another party unless:
(1)
the person is a relative or an employee or other agent of a client, and
(2)
the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

Rule 4.1.
Truthfulness in Statements to Others
In the course of representing a client a lawyer shall not knowingly:
(a)
make a false statement of material fact or law to a third person; or
(b)
fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

Rule 8.4.
Misconduct
It is professional misconduct for a lawyer to:
(a)
Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
(b)
Commit a criminal act especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
(c)
Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
(d)
Engage in conduct that is prejudicial to the administration of justice;
(e)
State or imply an ability to influence improperly a judge, judicial officer, governmental

agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;
(f)
Knowingly assist a judge or judicial officer in conduct that is a violation of applicable Rules of Judicial Conduct or other law; or
(g) Threaten to present criminal or disciplinary charges solely to obtain an advantage in a civil matter.

III. Professional Rules Governing Escrow Accounts:

A. Louisiana Rules of Professional Conduct With amendments through July1, 2016:

Rule 1.15.
Safekeeping Property
(a)
A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Except as provided in (g) and the IOLTA Rules below, funds shall be kept in one or more separate interest bearing client trust accounts maintained in a bank or savings and loan association: 1) authorized by federal or state law to do business in Louisiana, the deposits of which are insured by an agency of the federal government; 2) in the state where the lawyer's primary office is situated, if not within Louisiana; or 3) elsewhere with the consent of the client or third person. No earnings on a client trust account may be made available to or utilized by a lawyer or law firm. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.
(b)
A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account or obtaining a waiver of those charges, but only in an amount necessary for that purpose.
(c)
A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred. The lawyer shall deposit legal fees and expenses into the client trust account consistent with Rule 1.5(f).
(d)
Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. For purposes of this rule,
the third person's interest shall be one of which the lawyer has actual knowledge, and shall be limited to a statutory lien or privilege, a final judgment addressing disposition of those

funds or property, or a written agreement by the client or the lawyer on behalf of the client guaranteeing payment out of those funds or property. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly liver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e)

When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(f)

Every check, draft, electronic transfer, or other withdrawal instrument or authorization from a client trust account shall be personally signed by a lawyer or, in the case of electronic, telephone, or wire transfer, from a client trust account, directed by a lawyer or, in the case of a law firm, one or more lawyers authorized by the law firm. A lawyer shall not use any debit card or automated teller machine card to withdraw funds from a client trust account. On client trust accounts, cash withdrawals and checks made payable to "Cash" are prohibited.

A lawyer shall subject all client trust accounts to a reconciliation process at least quarterly, and shall maintain records of the reconciliation as mandated by this rule.

[Last sentence added 1/13/2015 and effective 4/1/2015]

(g)

A lawyer shall create and maintain an "IOLTA Account," which is a pooled interest bearing client trust account for funds of clients or third persons which are nominal in amount or to be held for such a short period of time that the funds would not be expected to earn income for the client or third person in excess of the costs incurred to secure such income.

(1)

IOLTA Accounts shall be of a type approved and authorized by the Louisiana Bar Foundation and maintained only in "eligible" financial institutions, as approved and certified by the Louisiana Bar Foundation. The Louisiana Bar Foundation shall establish regulations, subject to approval by the Supreme Court of Louisiana, governing the determination that a financial institution is eligible to hold IOLTA Accounts and shall at least annually publish a list of LBF approved/certified eligible financial institutions. Participation in the IOLTA program is voluntary for financial institutions. IOLTA Accounts shall be established at a bank or savings and loan association authorized by federal or state law to do business in Louisiana, the deposits of which are insured by an agency of the federal government or at an open end investment company registered with the Securities and Exchange Commission authorized by federal or state law to do business in Louisiana which shall be invested solely in or fully collateralized by U.S. Government Securities with total assets of at least $250,000,000 and in order for a financial institution to be approved and certified by the Louisiana Bar Foundation as eligible, shall comply with the following provisions:

(A)

No earnings from such an account shall be made available to a lawyer or law firm.
(B)
Such account shall include all funds of clients or third persons which are nominal in amount or to be held for such a short period of time the funds would not be expected to earn income for the client or third person in excess of the costs incurred to secure such income.
(C)
Funds in each interest bearing client trust account shall be subject to withdrawal upon request and without delay, except as permitted by law.
(2)
To be approved and certified by the Louisiana Bar Foundation as eligible, financial institutions shall maintain IOLTA Accounts which pay an interest rate comparable to the highest interest rate or dividend generally available from the institution to its non-IOLTA customers when IOLTA Accounts meet or exceed the same minimum balance or other eligibility qualifications, if any. In determining the highest interest rate or dividend generally available from the institution to its non IOLTA accounts, eligible institutions may consider factors, in addition to the IOLTA Account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that such factors do not discriminate between IOLTA Accounts and accounts of non IOLTA customers, and that these factors do not include that the account is an IOLTA Account. The eligible institution shall calculate interest and dividends in accordance with its standard practice for non IOLTA customers, but the eligible institution may elect to pay a higher interest or dividend rate on IOLTA Accounts.
(3)
To be approved and certified by the Louisiana Bar Foundation as eligible, a financial institution may achieve rate comparability required in (g)(2) by:
(A)
Establishing the IOLTA Account as:
(1) an interest bearing checking account; (2) a money market deposit account with or tied to checking; (3) a sweep account which is a money market fund or daily (overnight) financial institution repurchase agreement invested solely in or fully collateralized by U.S. Government Securities; or (4) an open end money market fund solely invested in or fully collateralized by U.S. Government Securities. A daily financial institution repurchase agreement may be established only with an eligible institution that is “well capitalized” or “adequately capitalized” as those terms are defined by applicable federal statutes and regulations. An open end money market fund must be invested solely in U.S. Government Securities or repurchase agreements fully collateralized by U.S. Government Securities, must hold itself out as a “money market fund” as that term is defined by federal statutes and regulations under the Investment Company Act of 1940, and, at the time of the investment, must have total assets of at least $250,000,000. “U.S. Government Securities” refers to U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest by the United

States or any agency or instrumentality thereof.

(B)

Paying the comparable rate on the IOLTA checking account in lieu of establishing the IOLTA Account as the higher rate product; or

(C)

Paying a "benchmark" amount of qualifying funds equal to 60% of the Federal Fund Target Rate as of the first business day of the quarter or other IOLTA remitting period; no fees may be deducted from this amount which is deemed already to be net of "allowable reasonable fees."

(4)

Lawyers or law firms depositing the funds of clients or third persons in an IOLTA Account shall direct the depository institution:

(A)

To remit interest or dividends, net of any allowable reasonable fees on the average monthly balance in the account, or as otherwise computed in accordance with an eligible institution's standard accounting practice, at least quarterly, to the Louisiana Bar Foundation, Inc.;

(B)

To transmit with each remittance to the Foundation, a statement, on a form approved by the LBF, showing the name of the lawyer or law firm for whom the remittance is sent and for each account: the rate of interest or dividend applied; the amount of interest or dividends earned; the types of fees deducted, if any; and the average account balance for each account for each month of the period in which the report is made; and

(C)

To transmit to the depositing lawyer or law firm a report in accordance with normal procedures for reporting to its depositors.

(5)

"Allowable reasonable fees" for IOLTA Accounts are: per check charges; per deposit charges; a fee in lieu of minimum balance; sweep fees and a reasonable IOLTA Account administrative fee. All other fees are the responsibility of, and may be charged to, the lawyer or law firm maintaining the IOLTA Account. Fees or service charges that are not "allowable reasonable fees" include, but are not limited to: the cost of check printing; deposit stamps; NSF charges; collection charges; wire transfers; and fees for cash management. Fees or charges in excess of the earnings accrued on the account for any month or quarter shall not be taken from earnings accrued on other IOLTA Accounts or from the principal of the account. Eligible financial institutions may elect to waive any or all fees on IOLTA Accounts.

(6)

A lawyer is not required independently to determine whether an interest rate is comparable to the highest rate or dividend generally available and shall be in presumptive compliance with Rule 1.15(g) by maintaining a client trust account of the type approved and authorized by the Louisiana Bar Foundation at an "eligible" financial institution.

(7)

“Unidentified Funds” are funds on deposit in an IOLTA account for at least one year that after reasonable due diligence cannot be documented as belonging to a client, a third person, or the lawyer or law firm.

(h)

A lawyer who learns of Unidentified Funds in an IOLTA account must remit the funds to the Louisiana Bar Foundation. No charge of misconduct shall attend to a lawyer’s exercise of reasonable judgment under this paragraph (h).

A lawyer who either remits funds in error or later ascertains the ownership of remitted funds may make a claim to the Louisiana Bar Foundation, which after verification of the claim will return the funds to the lawyer.

IOLTA Rules

(1)

The IOLTA program shall be a mandatory program requiring participation by lawyers and law firms, whether proprietorships, partnerships, limited liability companies or professional corporations.

(2)

The following principles shall apply to funds of clients or third persons which are held by lawyers and law firms:

(a)

No earnings on the IOLTA Accounts may be made available to or utilized by a lawyer or law firm.

(b)

Upon the request of, or with the informed consent of a client or third person, a lawyer may deposit funds of the client or third person into a non IOLTA, interest bearing client trust account and earnings may be made available to the client or third person , respectively, whenever possible upon deposited funds which are not nominal in amount or are to be held for a period of time long enough that the funds would be expected to earn income for the client or third person in excess of the costs incurred to secure such income; however, traditional lawyer client relationships do not compel lawyers either to invest such funds or to advise clients or third persons to make their funds productive.

(c)

Funds of clients or third persons which are nominal in amount or to be held for such a short period of time that the funds would not be expected to earn income for the client or third person in excess of the costs incurred to secure such income shall be retained in an IOLTA Account at an eligible financial institution as outlined above in section (g), with the interest or dividend (net of allowable reasonable fees) made payable to the Louisiana Bar Foundation, Inc., said payments to be made at least quarterly.

(d)

In determining whether the funds of a client or third person can earn income in excess of costs, a lawyer or law firm shall consider the following factors:

(1)

The amount of the funds to be deposited;

(2)

The expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held;
(3)
The rates of interest or yield at financial institutions where the funds are to be deposited;
(4)
The cost of establishing and administering non IOLTA accounts for the benefit of the client or third person including service charges, the costs of the lawyer's services, and the costs of preparing any tax reports required for income accruing to the benefit of the client or third person;
(5)
The capability of financial institutions, lawyers or law firms to calculate and pay income to individual clients or third persons;
(6)
Any other circumstances that affect the ability of the funds of the client or third person to earn a positive return for the client or third person. The determination of whether funds to be invested could be utilize
d to provide a positive net return to the client or third person rests in the sound judgment of each lawyer or law firm. The lawyer or law firm shall review its IOLTA Account at reasonable intervals to determine whether changed circumstances require further action with respect to the funds of any client or third person.
(e)
Although notification of a lawyer's participation in the IOLTA Program is not required to be given to clients or third persons whose funds are held in IOLTA Accounts, many lawyers may want to notify their clients or third persons of their participation in the program in some fashion. The Rules do not prohibit a lawyer from advising all clients or third persons of the lawyer's advancing the administration of justice in Louisiana beyond the lawyer's individual abilities in conjunction with other public spirited members of the profession. The placement
of funds of clients or third persons in an IOLTA Account is within the sole discretion of the lawyer in the exercise of the lawyer's independent professional judgment; notice to the client or third person is for informational purposes only.
(3)
The Louisiana Bar Foundation shall hold the entire beneficial interest in the interest or dividend income derived from client trust accounts in the IOLTA program. Interest or dividend earned by the program will be paid to the Louisiana Bar Foundation, Inc. to be used solely for the following purposes:
(a)
to provide legal services to the indigent and to the mentally disabled;
(b)
to provide law related educational programs for the public;
(c)
to study and support improvements to the administration of justice; and
(d)
for such other programs for the benefit of the public and the legal system of the

state as are specifically approved from time to time by the Supreme Court of Louisiana.

(4)

The Louisiana Bar Foundation shall prepare an annual report to the Supreme Court of Louisiana that summarizes IOLTA income, grants, operating expenses and any other problems arising out of administration of the IOLTA program. In addition, the Louisiana Bar Foundation shall also prepare an annual report to the Supreme Court of Louisiana that summarizes all other Foundation income, grants, operating expenses and activities, as well as any other problems which arise out of the Foundation's implementation of its corporate purposes. The Supreme Court of Louisiana shall review, study and analyze such reports and shall make recommendations to the Foundation with respect thereto.

B. Rules for Lawyer Disciplinary Enforcement (Louisiana Supreme Court Rule XIX) With amendments through January 27, 2016

Section 28. Maintenance of Trust Accounts by Lawyers; Access to Lawyers' Financial Account Records; Overdraft Notification.

A. Clearly Identified Trust Accounts in Financial Institutions Required.

(1) Lawyers who practice law in Louisiana shall deposit all funds held in trust in a bank or similar institution in this state, or elsewhere with the consent of the client or third party, in accounts clearly identified as "trust" or "escrow" accounts, referred to herein as "trust accounts," and shall take all steps necessary to inform the depository institution of the purpose and identity of the accounts. Funds held in trust include funds held in any fiduciary capacity in connection with a representation, whether as trustee, agent, guardian, exec
utor or otherwise. Lawyer trust accounts shall be maintained only in financial institutions that execute the agreement described in paragraph D below.

(2) Every lawyer engaged in the practice of law in Louisiana shall maintain and preserve for a period of at least five years, after final disposition of the underlying matter, the records, check stubs, vouchers, ledgers, journals, closing statements, accounts or other statements of disbursements rendered to clients or other parties with regard to trust funds
or similar equivalent records clearly and expressly reflecting the date, amount, source, and explanation for all receipts, withdrawals, deliveries and disbursements of the funds or other property of a client.

B. Access to Lawyers' Financial Account Records.

Every lawyer practicing or admitted to practice law in Louisiana shall, as a condition thereof, be conclusively deemed to have consented to the production by the depository institution of records of all financial accounts maintained by the lawyer in any bank or similar institution, and

the overdraft reporting requirements mandated by this rule.

C. Request for Production of Records.

A request by disciplinary counsel directed to a bank or other financial institution for production of records pursuant to this Section shall certify that the request is issued in accordance with the requirements of this Section and Section 29 of these Rules of Lawyer Disciplinary Enforcement.

D. Overdraft Notification Agreement Required.

A financial institution shall be approved as a depository for lawyer trust accounts if it files with the Board an agreement, in a form provided by the Board and approved by the Court, to report to the Office of Disciplinary Counsel whenever any properly payable instrument is presented against a lawyer trust account containing insufficient funds, irrespective of whether or not the instrument is honored. The Board shall administer securing participation of the financial institutions, and shall annually publish a list of the financial institutions that have executed overdraft notification agreements with the Board. No trust account shall be maintained in any financial institution that does not agree to so report. Any such agreement shall apply to all branches of the financial institution and shall not be cancelled except upon thirty (30) days notice in writing to the Board. Notification of trust or escrow account overdrafts shall be made in accordance with La. R. S. 6:332 and La. R. S. 6:333(F)(16).

Section 29. Verification of Financial Accounts.

A.

Generally.

Whenever disciplinary counsel has probable cause to believe that financial accounts of a lawyer that contain, should contain, or have contained funds belonging to clients or third parties have not been properly maintained or that the funds have not been properly handled, disciplinary counsel shall request the approval of the chair of a hearing committee selected in order from the roster established by the board to initiate an investigation for the purpose of verifying the accuracy and integrity of all accounts maintained by the lawyer in any bank or similar institution. If the reviewing member approves, counsel shall proceed to verify the accuracy of the financial accounts. If the reviewing member denies approval, counsel may submit the request for approval to one other chair of a hearing committee selected in order from the roster established by the board.

B. Confidentiality.

Investigations, examinations, and verifications shall be conducted so as to preserve the private and confidential nature of the lawyer's records insofar as is consistent with these rules and the lawyer client privilege.

Appendix F to Disciplinary Rules: Supreme Court of Louisiana Trust Account Disclosure & Overdraft Notification Authorization

Pursuant to the inherent, plenary and Constitutional authority of the Louisiana Supreme Court to regulate the practice of law, and in accordance with Supreme Court Rule XIX, every attorney

licensed to and engaged in the practice law in Louisiana is required to disclose the existence of a trust or escrow account (or declare that because of the nature of his/her practice that he/she is not required to maintain such an account). Every attorney who maintains a trust or escrow account as required by the Rules of Professional Conduct is required to maintain such account with a federally insured financial institution with whom the attorney has executed an agreement which authorizes the financial institution to provide written or electronic notification to the Office of Disciplinary Counsel of any account overdraft. Use of this form complies with the rules of the Louisiana Supreme Court.

C. From the Trust Account Disclosure & Overdraft Notification Authorization Form:

A. All attorneys holding funds of clients or third persons must maintain a separate account for such funds (commonly referred to a trust or escrow account);

B. Every attorney maintaining a qualified pooled trust or escrow account must participate in the
Interest on Lawyers Trust Account (IOLTA) Program administered by the Louisiana Bar Foundation; and

C. All attorneys who are required to maintain trust or escrow accounts must do so with federally insured financial institutions with which they have executed agreements requiring the financial institutions to provide to the Office of Disciplinary Counsel written or electronic notification of any overdraft incident created on such accounts.

(Notice to Financial Institution:
Pursuant to Legislative Act 249 of the 2005 Regular Session, notice to the Office of Disciplinary Counsel shall be issued after five (5) business days have passed from the date of notice to the attorney, and whether or not the account remains in overdraft status; but such notice will not issue where the overdraft was created solely by bank charges imposed or when charges are imposed through bank error. Costs associated with providing this notice may be charged to the attorney and deducted from the interest created on the trust or escrow account. The act provides that no civil or criminal action may be based upon a disclosure or non-disclosure of financial records made pursuant to the Act.)

SESSION 7

CANNABIS TRADEMARKS

28th Cutting Edge Entertainment Law Seminar

The Pandemic REDUX

LIVE and Online

CUTTING EDGE ENTERTAINMENT LAW CONFERENCE
August 22-24th, 2019

Attorney Ethics and Professionalism-CLE OUTLINE: Professionalism and the Ornery Opponent:

David A. Dalia
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830 Union Street, Suite 302
New Orleans, LA 70112
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E-Mail: davidadalia@gmail.com

With Judith A. DeFraites and David A. Dalia

Dedicated to Vernon P. Thomas, Esq., a truly great man.

OUTLINE

I. Some Louisiana Supreme Court disciplinary cases- August 2018 - July 2019
II. Pertinent Disciplinary Rules
III. Professional Rules Governing Escrow Accounts

TEXT

I. Some Louisiana Supreme Court disciplinary cases- August 2018 - July 2019

"IN RE: M G. S
NO. 2019-B-0908
SUPREME COURT OF LOUISIANA
June 26, 2019..." In re S (La., 2019)

Motion filed by the Office of Disciplinary Counsel ("ODC") against respondent, M G. S. The motion seeks to revoke respondent's probation and make the previously-deferred portion of his suspension executory based on allegations that respondent failed to comply with the conditions of probation imposed in In re: S, 17-1043 (La. 10/16/17), 226 So. 3d 1102 ("S I").

The record in S I demonstrated that respondent mismanaged his client trust account, neglected a legal matter, failed to communicate with a client, and failed to cooperate with the ODC in two

investigations. For this misconduct, the court suspended respondent from the practice of law for one year and one day, with all but sixty days deferred, followed by a two-year period of supervised probation with the following conditions: (1) respondent shall successfully complete Trust Accounting School; (2) respondent shall successfully complete Ethics School; and:

(3) respondent shall provide the ODC with quarterly audits of his client trust account.

The ODC alleged that respondent failed to submit quarterly audits of his client trust account, as required by his probation agreement.

After a hearing, at which respondent failed to appear, the disciplinary board concluded that respondent failed to comply with the terms and conditions of his probation by failing to provide the ODC with the name of a CPA for approval and by failing to provide any quarterly audits of his client trust account as required by the court's order in S I a.

"DECREE

For the reasons assigned, respondent's probation is revoked and the previously-deferred portion of the one year and one day suspension imposed in In re: S, 17-1043 (La. 10/16/17), 226 So. 3d 1102, is hereby made immediately executory." In re S (La., 2019)

"IN RE: P. G.
NO. 2018-B-1646
SUPREME COURT OF LOUISIANA
June 26, 2019
ATTORNEY DISCIPLINARY PROCEEDING..." In re G (La., 2019)

"On February 3, 2016, the ODC received an overdraft notice regarding a November 23, 2015 overdraft in respondent's client trust account. The overdraft resulted from respondent's attempt to pay a third-party medical provider for services rendered to a client who had no funds in the trust account." In re G (La., 2019)

Thereafter, the ODC's forensic auditor conducted an audit of respondent's trust account for the period of August 1, 2015 through January 31, 2016. The audit revealed that respondent regularly paid non-client expenses and made cash withdrawals from his trust account; these non-client expenses and cash withdrawals totaled $33,219.33 during the audit period. The audit also revealed that, on January 31, 2016, the trust account balance to satisfy pending client expenditures should have been at least $16,345.62. Instead, the balance on that date was $3,235.61, resulting in a deficit of $13,110.01.

On March 17, 2016, respondent informed the ODC that he was addicted to OxyContin, explaining that "the cost of the medication coupled with its effects on me overwhelmed my finances and I eventually began to take money from my Trust account." He also informed the

ODC that he had contacted the Judges and Lawyers Assistance Program ("JLAP") and was preparing to enter inpatient treatment. He further informed the ODC that "I have also gone through my files and paid all outstanding debts that had been previously withheld from client settlements." This last statement was confirmed by the ODC's audit of respondent's trust account. Finally, during his October 26, 2016 sworn statement to the ODC, respondent admitted that he regularly used his trust account as a second operating account in 2015.

On July 7, 2016, respondent completed a ninety-day inpatient treatment program at Palmetto Addiction Recovery Center. Palmetto's medical director diagnosed respondent with severe opioid use disorder, among other diagnoses. On July 12, 2016, respondent signed a five-year JLAP recovery agreement.

Regarding mitigating factors, the committee noted that the ODC had stipulated to the following: absence of a prior disciplinary record, timely good faith effort to make restitution or to rectify the consequences of the misconduct, and full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings.

In light of the above findings, the committee recommended respondent be suspended from the practice of law for one year and one day, fully deferred, subject to the following conditions:...

1. Respondent shall continue to be bound by the terms of his JLAP recovery agreement for at least two years;

2. Respondent shall obtain regular audits of his trust account, to be performed by a CPA approved by the ODC;

3. Respondent shall submit the findings of the audits on a quarterly basis to the ODC for two years;

4. Respondent shall take at least six hours of continuing legal education in the area of law office practice/client trust account management; and

5. Respondent shall successfully complete the Louisiana State Bar Association's Trust Accounting School within one year.

The ODC objected to the leniency of the committee's recommended sanction, arguing that the period of deferment is not supported by the record.

"The board recognized the sole aggravating factor of multiple offenses." In re Giraud (La., 2019) "Based on this reasoning, we will suspend respondent from the practice of law for one year and one day, with all but six months deferred, subject to two years of probation with the conditions set forth in the board's report,..."

IN RE: J F. O, JR.
NO. 2019-OB-0985
SUPREME COURT OF LOUISIANA
June 26, 2019

ORDER

The Office of Disciplinary Counsel ("ODC") filed formal charges against respondent, alleging that he failed to file federal tax returns on behalf of his law firm and failed to remit funds withheld from his employees' paychecks to the federal government. Respondent now seeks to permanently resign from the practice of law in lieu of discipline. The ODC has concurred in respondent's petition.

IT IS FURTHER ORDERED that J F. O. Jr. shall be permanently prohibited from practicing law in Louisiana or in any other jurisdiction in which he is admitted to the practice of law; shall be permanently prohibited from seeking readmission to the practice of law in this state or in any other jurisdiction in which he is admitted; and shall be permanently prohibited from seeking admission to the practice of law in any jurisdiction.

IN RE: T A. H
NO. 2019-B-0827
SUPREME COURT OF LOUISIANA
June 17, 2019
ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

Respondent, T A. H, was arrested for alcohol-related misconduct on four occasions, three of which involved driving while intoxicated. For this misconduct, we accepted a joint petition for consent discipline filed by respondent and the Office of Disciplinary Counsel ("ODC") and suspended respondent for a period of one year and one day, with all but six months deferred, subject to a period of probation to coincide with respondent's recovery agreement with the Judges and Lawyers Assistance Program ("JLAP").1 In re: H, 17-0726 (La. 9/15/17), 224 So. 3d 963

IN RE: A D P
NO. 2019-B-0901

SUPREME COURT OF LOUISIANA
June 17, 2019
ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

The Office of Disciplinary Counsel ("ODC") commenced an investigation into allegations that respondent neglected a legal matter, failed to communicate with a client, and engaged in a personal relationship with a current client. Following the filing of formal charges, respondent and the ODC submitted a joint petition for consent discipline in which respondent admitted that his conduct violated Rules 1.3, 1.4(a)(3), 1.7, and 8.4(a) of the Rules of Professional Conduct. Having reviewed the petition,

IT IS ORDERED that the Petition for Consent Discipline be accepted and that A D P, Louisiana Bar Roll number 25815, be and he hereby is suspended from the practice of law for a period of one year.

IT IS FURTHER ORDERED that all costs and expenses in the matter are assessed against respondent in accordance with Supreme Court Rule XIX, § 10.1, with legal interest to commence thirty days from the date of finality of this court's judgment until paid.

IN RE: K L J
No. 2019-B-0653
SUPREME COURT OF LOUISIANA
June 3, 2019
ATTORNEY DISCIPLINARY PROCEEDING

Crichton, J., would reject the petition for consent discipline.

I dissent from the per curiam, because, in my view, the discipline of one year and one day, with only thirty days deferred, is too lenient. Respondent herself stipulated that she as grossly negligent in the mismanagement of her client trust account. Further, I find respondent's failures to respond the Office of Disciplinary Counsel in its investigations of that mismanagement to be egregious.

With respect to Count I, Respondent initially failed to respond to the ODC's notice of a June 2017 overdraft of her client trust account. After ODC issued a formal complaint, respondent submitted a request for an extension of time to respond, but the account was again overdrawn. She was then sent notice of the second overdraft, but failed to respond to that notice, requiring the ODC to send a second request for a response. At that point, by now months later in October 2017, respondent again requested another extension of time. The ODC granted her that courtesy, but she again failed to respond. After a third request for a response from the ODC, respondent provided some materials, but it was incomplete. Thus, ODC had to request additional documentation, leading to a similar circle of events in which respondent again requested additional time, which was granted by ODC, but did not submit the supplemental materials.

IN RE: G C
NO. 2019-B-0406
SUPREME COURT OF LOUISIANA

June 3, 2019
ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

Respondent, G C, engaged in a conflict of interest. For this misconduct, we suspended respondent for a period of six months, with all but thirty days deferred, subject to one year of unsupervised probation. In re: C, 18-1076 (La. 12/5/18), 2018 WL 6390368 ("C I"). Respondent did not file a request for a rehearing, and the order of suspension became final and effective on December 20, 2018. In the instant matter, the Office of Disciplinary Counsel ("ODC") seeks to make the deferred suspension executory, based upon allegations that respondent engaged in the unauthorized practice of law during his suspension and made false representations in his affidavit for reinstatement.

UNDERLYING FACTS AND PROCEDURAL HISTORY

On February 8, 2019, respondent telephoned the ODC to discuss his probation. Both during this telephone call and thereafter in writing, respondent admitted that he regularly engaged in the practice of law after the effective date of his suspension.

The ODC has verified numerous actions taken by respondent during his suspension which constitute the practice of law:...

We agree that these circumstances constitute misconduct. Although the ODC has requested that that the previously-deferred portion of the suspension be made executory, we find no evidence that respondent has served any part of the active portion of his suspension. To the contrary, the record reveals respondent continued to practice law between the finality of our decree on December 20, 2018 through January 31, 2019. Accordingly, we will make the entire six-month suspension imposed in C I immediately executory, to commence from the date of this decree.

WHAT WAS THE CONFLICT OF INTEREST?:

IN RE: G C
NO. 2018-B-1076
SUPREME COURT OF LOUISIANA
December 5, 2018
ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel ("ODC") against respondent, G C, an attorney licensed to practice law in Louisiana.

UNDERLYING FACTS

In February 2016, Cedric Duncan and his sisters, Pamelian Norwood and Angela Freeman, hired respondent to handle the succession of their mother, Ethel Duncan, who died intestate on February 11, 2016. Respondent charged a flat fee of $1,800, and the siblings agreed to split the fee three ways. Respondent was paid the entire $1,800 and provided Cedric with a receipt for $600. Nevertheless, respondent claimed he never received any money directly from Cedric, asserting that Angela paid Cedric's portion of the fee.

The petition for possession respondent prepared and filed excluded Cedric as an heir to Ethel's estate. Respondent claimed Pamelian and Angela told him Cedric no longer wished to be a part of the succession. However, respondent never verified this with Cedric. In June 2016, the judge signed the judgment of possession splitting Ethel's property equally between Pamelian and Angela.

When Cedric received a copy of the judgment of possession, he hired attorney Kristina Shapiro to reopen the succession, paying her $3,000 for the representation.

Ms. Shapiro filed a petition to annul the judgment of possession and for damages, naming Pamelian, Angela, and respondent as defendants. Ms. Shapiro also filed a motion to reopen the succession.

Respondent filed an answer to the petition to annul the judgment of possession and for damages on behalf of Pamelian, Angela, and himself. Respondent also appeared at the December 1, 2016 hearing to reopen the succession and argued on behalf of Pamelian and Angela. The judge reopened the succession and named Cedric as the administrator. Shortly thereafter, respondent withdrew from the representation of Pamelian and Angela.

[See Disciplinary Proceedings in this case above]

IN RE: C J. W
NO. 2019-B-0663
SUPREME COURT OF LOUISIANA
June 3, 2019
ATTORNEY DISCIPLINARY PROCEEDINGS

PER CURIAM

The Office of Disciplinary Counsel ("ODC") commenced an investigation into allegations that respondent committed serious attorney misconduct, including neglect of his clients' legal matters, failure to communicate with his clients, failure to refund unearned fees, failure to placed advanced deposits for costs and expenses into his client trust account, and failure to return his clients' files upon the termination of the representation. Respondent also practiced law while he was ineligible to do so, failed to cooperate with the ODC in its investigation, and was charged with issuing worthless checks. Following the filing of formal charges, respondent and the ODC submitted a joint petition for consent discipline. Having reviewed the petition,

IT IS ORDERED that the Petition for Consent Discipline be accepted and that C J. W, Louisiana Bar Roll number 29017, be suspended from the practice of law for a period of three years, which suspension commences from the effective date of this order.

IT IS FURTHER ORDERED that respondent shall make full restitution to all clients to whom refunds are owed.

IT IS FURTHER ORDERED that all costs and expenses in the matter are assessed against respondent..

IN RE: M. F
NO. 2018-B-1483
SUPREME COURT OF LOUISIANA
May 28, 2019
ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

Pursuant to Supreme Court Rule XIX, § 21, the Office of Disciplinary Counsel ("ODC") has filed a petition seeking the imposition of reciprocal discipline against respondent, M R. F, an attorney licensed to practice law in Louisiana, Tennessee, and Colorado, based upon discipline imposed by the Supreme Court of Colorado.

UNDERLYING FACTS AND PROCEDURAL HISTORY

In 1987, respondent maintained a law office in Denver, Colorado, wherein he accepted new legal cases and collected retainers until October 21, 1987. On October 23, 1987, respondent essentially abandoned his law practice when he moved to Ireland without notice to most of his clients. Thereafter, respondent failed to file his 1988 annual registration statement or pay the $90 registration fee.

Seven of respondent's clients filed grievances with the Colorado Disciplinary Counsel. Respondent failed to appear and answer a multiple count disciplinary complaint. The Supreme Court of Colorado ultimately found that respondent abandoned his law practice, converted his clients' funds to his own use, and failed to cooperate in the disciplinary proceedings. For this misconduct, the Supreme Court of Colorado disbarred1 respondent and ordered him to make restitution to the seven clients in the total amount of $14,750.36.

After receiving notice of the Colorado order of discipline on January 27, 2017, the ODC filed a motion to initiate reciprocal discipline proceedings in Louisiana, pursuant to Supreme Court Rule XIX, § 21. A copy of the Final Judgment and Order issued by the Supreme Court of Colorado was attached to the motion.

On September 7, 2018, this court rendered an order giving respondent thirty days to demonstrate why the imposition of identical discipline in this state would be unwarranted. Respondent did not file a response to the court's order.

DISCUSSION

The standard for imposition of discipline on a reciprocal basis is set forth in Supreme Court Rule XIX, § 21(D). That rule provides:

> Discipline to be Imposed. Upon the expiration of thirty days from service of the notice pursuant to the provisions of paragraph B, this court shall impose the identical discipline ... unless disciplinary counsel or the lawyer demonstrates, or this court finds that it clearly appears upon the face of the record from which the discipline is predicated, that:
>
> (1) The procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
> (2) Based on the record created by the jurisdiction that imposed the discipline, there was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the court could not, consistent with its duty, accept as final the conclusion on that subject; or
> (3) The imposition of the same discipline by the court would result in grave injustice or be offensive to the public policy of the jurisdiction; or
> (4) The misconduct established warrants substantially different discipline in this state;
> If this court determines that any of those elements exists, this court shall enter such other order as it deems appropriate. The burden is on the party seeking different discipline in this jurisdiction to demonstrate that the imposition of the same discipline is not appropriate.

In the instant case, respondent has made no showing of infirmities in the Colorado proceeding, nor do we discern any from our review of the record. Furthermore, we find there is no reason to deviate from the sanction imposed in Colorado as only under extraordinary circumstances should there be a significant variance from the sanction imposed by the other jurisdiction. In re: Aulston, 05-1546 (La. 1/13/06), 918 So. 2d 461. See also In re Zdravkovich, 831 A.2d 964, 968-69 (D.C. 2003) ("there is merit in according deference, for its own sake, to the actions of other jurisdictions with respect to the attorneys over whom we share supervisory authority").

Under these circumstances, it is appropriate to defer to the Colorado judgment imposing discipline upon respondent. Accordingly, we will impose reciprocal discipline in the form of disbarment.

Footnotes:

1. According to the Colorado Rules of Civil Procedure, Rule 251.6(a), disbarment is the revocation of an attorney's license to practice law in the state for at least eight years, subject to readmission as provided by Rule 251.29(a), which provides in pertinent part that "[a] disbarred attorney may not apply for readmission until at least eight years after the effective date of the

order of disbarment."...
In re Franks (La., 2019)

BAR FORGIVENESS IS POSSIBLE:

IN RE: S J. H
NO. 2019-OB-0459
SUPREME COURT OF LOUISIANA
May 20, 2019
ON APPLICATION FOR REINSTATEMENT

PER CURIAM

This proceeding arises out of an application for reinstatement to the practice of law filed by petitioner, S J. H, a suspended attorney.

UNDERLYING FACTS AND PROCEDURAL HISTORY

In May 2001, petitioner was arrested and charged with driving while intoxicated ("DWI"), speeding, and improper lane usage. Ultimately, the DWI charge was dismissed, and petitioner pleaded guilty to the traffic charges.

In September 2001, petitioner vandalized a truck belonging to his ex-wife's boyfriend while it was parked at his ex-wife's home. He was arrested and charged with simple criminal damage to property and violation of a restraining order. He was also cited for failure to yield to an emergency vehicle for refusing to stop his car when the police ordered him to do so.

In December 2002, petitioner was arrested and charged with DWI second offense, hit and run, disobeying a red light, reckless driving, and failing to maintain proof of insurance. In February 2005, petitioner pleaded guilty to failing to report an accident, disobeying a red light, and reckless driving. In June 2005, the record of petitioner's arrest was expunged.

In June 2005, petitioner gave a sworn statement to the Office of Disciplinary Counsel ("ODC") regarding the three matters set forth above. In response to the ODC's questions, petitioner asserted his Fifth Amendment privilege against self-incrimination. The ODC insisted that he answer on the ground that all criminal charges against him had either been declined or resolved via plea agreement. Nevertheless, petitioner continued to refuse to answer, thereby failing to cooperate with the ODC's investigation.

For the above misconduct, we suspended petitioner from the practice of law for three years. In re: H, 09-0116 (La. 6/26/09), 15 So. 3d 82.

In June 2015, petitioner pleaded no contest to domestic abuse battery. In May 2016, we

accepted a joint petition for consent discipline filed by petitioner and the ODC and suspended petitioner from the practice of law for one year. In re: H, 16-0686 (La. 5/27/16), 193 So. 3d 124.

In August 2018, petitioner filed an application for reinstatement with the disciplinary board, alleging he has complied with the reinstatement criteria set forth in Supreme Court Rule XIX, § 24(E). The ODC took no position regarding the application for reinstatement. Accordingly, the matter was referred for a formal hearing before a hearing committee.

Following the hearing, the hearing committee recommended that petitioner be reinstated to the practice of law on a conditional basis for one year, subject to the following conditions:

1. Petitioner shall continue diagnostic monitoring with JLAP during the one-year probationary period. If his JLAP diagnostic monitoring agreement terminates by its own terms during the probationary period, then he shall execute a new agreement to satisfy this condition;

2. Petitioner shall maintain good standing pursuant to his JLAP agreement;

3. Petitioner shall maintain compliance with the Rules of Professional Conduct;

4. Petitioner shall cooperate with the ODC in the event of an inquiry as to his fitness to practice law; and

5. Petitioner shall satisfy all requirements to practice law pursuant to the rules governing attorneys in the State of Louisiana.

Neither petitioner nor the ODC objected to the hearing committee's recommendation.

DISCUSSION

After considering the record in its entirety, we find petitioner has met his burden of proving that he is entitled to be reinstated to the practice of law on a conditional basis. Accordingly, we will order that petitioner be reinstated to the practice of law, subject to a one-year period of probation governed by all of the conditions recommended by the hearing committee.
In re H (La., 2019)

IN RE: Y J K
NO. 2019-B-0356
SUPREME COURT OF LOUISIANA
May 20, 2019
ATTORNEY DISCIPLINARY PROCEEDING

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel ("ODC") against respondent, Y J K, an attorney licensed to practice law in Louisiana

but currently on interim suspension based upon her conviction of a serious crime. In re: K, 16-0331 (La. 3/14/16), 186 So. 3d 649 (Johnson, C.J., recused).

UNDERLYING FACTS

In February 2013, respondent qualified to run for Orleans Parish Juvenile Court, representing in her qualifying documents that she was domiciled in Orleans Parish. Respondent subsequently prevailed in a runoff election. In March 2014, a grand jury in Orleans Parish indicted respondent on two felony criminal charges arising out of allegations that she was actually domiciled in St. Tammany Parish and that she made false representations about her domicile when she qualified to run for judicial office.

Following the indictment, this court disqualified respondent from exercising any judicial function during the pendency of further proceedings. In re: K, 14-0924 (La. 5/15/14), 140 So. 3d 711 (Johnson, C.J., recused). Prior to a final adjudication of the judicial discipline matter against respondent, she lost the status of a judge when she was defeated in the fall 2014 elections. As a result, the ODC assumed jurisdiction over respondent.

In November 2015, a jury found respondent guilty of both counts of the indictment. She was sentenced in February 2016 to a suspended jail sentence and probation.

Thereafter, respondent filed a motion for an out of time appeal of her criminal conviction, which motion was granted. The court of appeal then remanded the case to the trial court with instructions to conduct an evidentiary hearing on a claim of ineffective assistance of counsel. State v. K, 17-0123 (La. App. 4th Cir. 10/27/17), 231 So. 3d 110.

Following remand, on December 18, 2017, respondent entered into a plea agreement, whereby the original convictions were vacated. In exchange, respondent pleaded guilty to a misdemeanor violation of La. R.S. 18:1461.3(C)(4) (disobeying any lawful instruction of a registrar, deputy registrar, or commissioner).1

DISCIPLINARY PROCEEDINGS

In March 2016, the ODC filed formal charges against respondent, alleging that her conduct violated the following provisions of the Rules of Professional Conduct: Rules 8.4(a) (violation of the Rules of Professional Conduct), 8.4(b)

(commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

Respondent initially failed to answer the formal charges, and the factual allegations contained therein were deemed admitted and proven by clear and convincing evidence. Eight months later, respondent, through counsel, filed an unopposed motion to recall the deemed

admitted order. She also sought a stay of the formal charge proceedings pending her criminal appeal. The motion and request for a stay were granted, and the deemed admitted order was recalled.
In re K (La., 2019)

In her submission, respondent indicated that she is the sole caregiver for her eighty-eight year old mother and fifty-six year old brother, both of whom are disabled and in need of constant care. After respondent's sister passed away in November 2015, respondent moved to Atlanta, Georgia to take care of them. In May 2018, respondent was forced to move with them back to Louisiana due to financial hardship. During the process, they have been without any home healthcare or transportation assistance services.

Respondent argued that she possesses good character and reputation. In support, she submitted three character reference letters as well as a transcript of her deposition, wherein she testified about her lifetime involvement in church and volunteer work with various juvenile agencies.

Respondent suggested that this matter is guided by the court's ruling in In re: Richmond, 08-0742 (La. 12/2/08), 996 So. 2d 282, wherein an attorney was found to have knowingly made false statements under oath regarding his domicile when he qualified as a candidate for public office. For his misconduct, the court suspended the attorney for six months, and in light of the mitigating factors present, deferred all but sixty days of the suspension. Respondent indicated that a similar sanction would be appropriate here, although, unlike Mr. Richmond, respondent did not occupy a position of public trust at the time of her conduct.2 Respondent requested that any sanction be made retroactive to the date of her interim suspension, and requested that all costs and expenses associated with this proceeding be waived as she has been unemployed since December 2015.

In its submission on sanction, the ODC indicated that it could not stipulate to the presence of "personal problems" as a mitigating factor, inasmuch as there appeared to be no correlation between the acts of dishonesty by respondent in falsifying her domicile in the qualifying process and her mother's health problems and her brother's care needs. The ODC agreed that this matter is guided by Richmond, but noted that unlike respondent, Mr. Richmond was not criminally prosecuted for his conduct. The ODC suggested that respondent be suspended from the practice of law for one year, retroactive to the date of her interim suspension.

Hearing Committee Report

After considering the record, the hearing committee made factual findings consistent with the underlying facts set forth above. Based on those facts, the committee determined respondent violated the Rules of Professional Conduct as alleged in the formal charges.

The committee determined that respondent violated duties owed to the public of this State. Her actions were knowing and intentional when she falsified her domicile in an attempt to be

elected as a juvenile court judge in Orleans Parish. Her actions caused harm to the public's trust in individuals seeking a position such as a judgeship. Respondent admitted that her behavior caused an undue burden on the legal system and shed a "negative light on the judiciary and legal profession." After considering the ABA's Standards for Imposing Lawyer Sanctions, the committee determined the baseline sanction is suspension.

Upon review of the findings and recommendations of the hearing committee and disciplinary board, and considering the record, it is ordered that Y J K, Louisiana Bar Roll number 22096, be and she hereby is suspended from the practice of law for a period of one year, retroactive to March 14, 2016, the date of her interim suspension.

II. Pertinent Disciplinary Rules:

A. Louisiana Rules of Professional Conduct With amendments through July1, 2016:

Rule 1.15.
Safekeeping Property
(a)
A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. ...*[holding of client funds, see III, Escrow Section, below...]*... Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

Rule 3.2.
Expediting Litigation
A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Rule 3.4.
Fairness to Opposing Party and Counsel
A lawyer shall not:
(a)
unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;
(b)
falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
(c)

knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists;
(d)
in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;
(e)
in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or
(f)
request a person other than a client to refrain from voluntarily giving relevant information to another party unless:
(1)
the person is a relative or an employee or other agent of a client, and
(2)
the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

Rule 4.1.
Truthfulness in Statements to Others
In the course of representing a client a lawyer shall not knowingly:
(a)
make a false statement of material fact or law to a third person; or
(b)
fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

Rule 8.4.
Misconduct
It is professional misconduct for a lawyer to:
(a)
Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
(b)
Commit a criminal act especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
(c)
Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
(d)
Engage in conduct that is prejudicial to the administration of justice;
(e)
State or imply an ability to influence improperly a judge, judicial officer, governmental

agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;
(f)
Knowingly assist a judge or judicial officer in conduct that is a violation of applicable Rules of Judicial Conduct or other law; or
(g) Threaten to present criminal or disciplinary charges solely to obtain an advantage in a civil matter.

III. Professional Rules Governing Escrow Accounts:

A. Louisiana Rules of Professional Conduct With amendments through July1, 2016:

Rule 1.15.
Safekeeping Property
(a)
A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Except as provided in (g) and the IOLTA Rules below, funds shall be kept in one or more separate interest bearing client trust accounts maintained in a bank or savings and loan association: 1) authorized by federal or state law to do business in Louisiana, the deposits of which are insured by an agency of the federal government; 2) in the state where the lawyer's primary office is situated, if not within Louisiana; or 3) elsewhere with the consent of the client or third person. No earnings on a client trust account may be made available to or utilized by a lawyer or law firm. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.
(b)
A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account or obtaining a waiver of those charges, but only in an amount necessary for that purpose.
(c)
A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred. The lawyer shall deposit legal fees and expenses into the client trust account consistent with Rule 1.5(f).
(d)
Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. For purposes of this rule,
the third person's interest shall be one of which the lawyer has actual knowledge, and shall be limited to a statutory lien or privilege, a final judgment addressing disposition of those

funds or property, or a written agreement by the client or the lawyer on behalf of the client guaranteeing payment out of those funds or property. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly liver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e)

When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(f)

Every check, draft, electronic transfer, or other withdrawal instrument or authorization from a client trust account shall be personally signed by a lawyer or, in the case of electronic, telephone, or wire transfer, from a client trust account, directed by a lawyer or, in the case of a law firm, one or more lawyers authorized by the law firm. A lawyer shall not use any debit card or automated teller machine card to withdraw funds from a client trust account. On client trust accounts, cash withdrawals and checks made payable to "Cash" are prohibited.

A lawyer shall subject all client trust accounts to a reconciliation process at least quarterly, and shall maintain records of the reconciliation as mandated by this rule.

[Last sentence added 1/13/2015 and effective 4/1/2015]

(g)

A lawyer shall create and maintain an "IOLTA Account," which is a pooled interest bearing client trust account for funds of clients or third persons which are nominal in amount or to be held for such a short period of time that the funds would not be expected to earn income for the client or third person in excess of the costs incurred to secure such income.

(1)

IOLTA Accounts shall be of a type approved and authorized by the Louisiana Bar Foundation and maintained only in "eligible" financial institutions, as approved and certified by the Louisiana Bar Foundation. The Louisiana Bar Foundation shall establish regulations, subject to approval by the Supreme Court of Louisiana, governing the determination that a financial institution is eligible to hold IOLTA Accounts and shall at least annually publish a list of LBF approved/certified eligible financial institutions. Participation in the IOLTA program is voluntary for financial institutions. IOLTA Accounts shall be established at a bank or savings and loan association authorized by federal or state law to do business in Louisiana, the deposits of which are insured by an agency of the federal government or at an open end investment company registered with the Securities and Exchange Commission authorized by federal or state law to do business in Louisiana which shall be invested solely in or fully collateralized by U.S. Government Securities with total assets of at least $250,000,000 and in order for a financial institution to be approved and certified by the Louisiana Bar Foundation as eligible, shall comply with the following provisions:

(A)

No earnings from such an account shall be made available to a lawyer or law firm.
(B)
Such account shall include all funds of clients or third persons which are nominal in amount or to be held for such a short period of time the funds would not be expected to earn income for the client or third person in excess of the costs incurred to secure such income.
(C)
Funds in each interest bearing client trust account shall be subject to withdrawal upon request and without delay, except as permitted by law.
(2)
To be approved and certified by the Louisiana Bar Foundation as eligible, financial institutions shall maintain IOLTA Accounts which pay an interest rate comparable to the highest interest rate or dividend generally available from the institution to its non-IOLTA customers when IOLTA Accounts meet or exceed the same minimum balance or other eligibility qualifications, if any. In determining the highest interest rate or dividend generally available from the institution to its non IOLTA accounts, eligible institutions may consider factors, in addition to the IOLTA Account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that such factors do not discriminate between IOLTA Accounts and accounts of non IOLTA customers, and that these factors do not include that the account is an IOLTA Account. The eligible institution shall calculate interest and dividends in accordance with its standard practice for non IOLTA customers, but the eligible institution may elect to pay a higher interest or dividend rate on IOLTA Accounts.
(3)
To be approved and certified by the Louisiana Bar Foundation as eligible, a financial institution may achieve rate comparability required in (g)(2) by:
(A)
Establishing the IOLTA Account as:
(1) an interest bearing checking account; (2) a money market deposit account with or tied to checking; (3) a sweep account which is a money market fund or daily (overnight) financial institution repurchase agreement invested solely in or fully collateralized by U.S. Government Securities; or (4) an open end money market fund solely invested in or fully collateralized by U.S. Government Securities. A daily financial institution repurchase agreement may be established only with an eligible institution that is “well capitalized” or “adequately capitalized” as those terms are defined by applicable federal statutes and regulations. An open end money market fund must be invested solely in U.S. Government Securities or repurchase agreements fully collateralized by U.S. Government Securities, must hold itself out as a “money market fund” as that term is defined by federal statutes and regulations under the Investment Company Act of 1940, and, at the time of the investment, must have total assets of at least $250,000,000. “U.S. Government Securities” refers to U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest by the United

States or any agency or instrumentality thereof.

(B)

Paying the comparable rate on the IOLTA checking account in lieu of establishing the IOLTA Account as the higher rate product; or

(C)

Paying a "benchmark" amount of qualifying funds equal to 60% of the Federal Fund Target Rate as of the first business day of the quarter or other IOLTA remitting period; no fees may be deducted from this amount which is deemed already to be net of "allowable reasonable fees."

(4)

Lawyers or law firms depositing the funds of clients or third persons in an IOLTA Account shall direct the depository institution:

(A)

To remit interest or dividends, net of any allowable reasonable fees on the average monthly balance in the account, or as otherwise computed in accordance with an eligible institution's standard accounting practice, at least quarterly, to the Louisiana Bar Foundation, Inc.;

(B)

To transmit with each remittance to the Foundation, a statement, on a form approved by the LBF, showing the name of the lawyer or law firm for whom the remittance is sent and for each account: the rate of interest or dividend applied; the amount of interest or dividends earned; the types of fees deducted, if any; and the average account balance for each account for each month of the period in which the report is made; and

(C)

To transmit to the depositing lawyer or law firm a report in accordance with normal procedures for reporting to its depositors.

(5)

"Allowable reasonable fees" for IOLTA Accounts are: per check charges; per deposit charges; a fee in lieu of minimum balance; sweep fees and a reasonable IOLTA Account administrative fee. All other fees are the responsibility of, and may be charged to, the lawyer or law firm maintaining the IOLTA Account. Fees or service charges that are not "allowable reasonable fees" include, but are not limited to: the cost of check printing; deposit stamps; NSF charges; collection charges; wire transfers; and fees for cash management. Fees or charges in excess of the earnings accrued on the account for any month or quarter shall not be taken from earnings accrued on other IOLTA Accounts or from the principal of the account. Eligible financial institutions may elect to waive any or all fees on IOLTA Accounts.

(6)

A lawyer is not required independently to determine whether an interest rate is comparable to the highest rate or dividend generally available and shall be in presumptive compliance with Rule 1.15(g) by maintaining a client trust account of the type approved and authorized by the Louisiana Bar Foundation at an "eligible" financial institution.

(7)

“Unidentified Funds” are funds on deposit in an IOLTA account for at least one year that after reasonable due diligence cannot be documented as belonging to a client, a third person, or the lawyer or law firm.

(h)

A lawyer who learns of Unidentified Funds in an IOLTA account must remit the funds to the Louisiana Bar Foundation. No charge of misconduct shall attend to a lawyer’s exercise of reasonable judgment under this paragraph (h).

A lawyer who either remits funds in error or later ascertains the ownership of remitted funds may make a claim to the Louisiana Bar Foundation, which after verification of the claim will return the funds to the lawyer.

IOLTA Rules

(1)

The IOLTA program shall be a mandatory program requiring participation by lawyers and law firms, whether proprietorships, partnerships, limited liability companies or professional corporations.

(2)

The following principles shall apply to funds of clients or third persons which are held by lawyers and law firms:

(a)

No earnings on the IOLTA Accounts may be made available to or utilized by a lawyer or law firm.

(b)

Upon the request of, or with the informed consent of a client or third person, a lawyer may deposit funds of the client or third person into a non IOLTA, interest bearing client trust account and earnings may be made available to the client or third person , respectively, whenever possible upon deposited funds which are not nominal in amount or are to be held for a period of time long enough that the funds would be expected to earn income for the client or third person in excess of the costs incurred to secure such income; however, traditional lawyer client relationships do not compel lawyers either to invest such funds or to advise clients or third persons to make their funds productive.

(c)

Funds of clients or third persons which are nominal in amount or to be held for such a short period of time that the funds would not be expected to earn income for the client or third person in excess of the costs incurred to secure such income shall be retained in an IOLTA Account at an eligible financial institution as outlined above in section (g), with the interest or dividend (net of allowable reasonable fees) made payable to the Louisiana Bar Foundation, Inc., said payments to be made at least quarterly.

(d)

In determining whether the funds of a client or third person can earn income in excess of costs, a lawyer or law firm shall consider the following factors:

(1)

The amount of the funds to be deposited;

(2)

The expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held;
(3)
The rates of interest or yield at financial institutions where the funds are to be deposited;
(4)
The cost of establishing and administering non IOLTA accounts for the benefit of the client or third person including service charges, the costs of the lawyer's services, and the costs of preparing any tax reports required for income accruing to the benefit of the client or third person;
(5)
The capability of financial institutions, lawyers or law firms to calculate and pay income to individual clients or third persons;
(6)
Any other circumstances that affect the ability of the funds of the client or third person to earn a positive return for the client or third person. The determination of whether funds to be invested could be utilize
d to provide a positive net return to the client or third person rests in the sound judgment of each lawyer or law firm. The lawyer or law firm shall review its IOLTA Account at reasonable intervals to determine whether changed circumstances require further action with respect to the funds of any client or third person.
(e)
Although notification of a lawyer's participation in the IOLTA Program is not required to be given to clients or third persons whose funds are held in IOLTA Accounts, many lawyers may want to notify their clients or third persons of their participation in the program in some fashion. The Rules do not prohibit a lawyer from advising all clients or third persons of the lawyer's advancing the administration of justice in Louisiana beyond the lawyer's individual abilities in conjunction with other public spirited members of the profession. The placement
of funds of clients or third persons in an IOLTA Account is within the sole discretion of the lawyer in the exercise of the lawyer's independent professional judgment; notice to the client or third person is for informational purposes only.
(3)
The Louisiana Bar Foundation shall hold the entire beneficial interest in the interest or dividend income derived from client trust accounts in the IOLTA program. Interest or dividend earned by the program will be paid to the Louisiana Bar Foundation, Inc. to be used solely for the following purposes:
(a)
to provide legal services to the indigent and to the mentally disabled;
(b)
to provide law related educational programs for the public;
(c)
to study and support improvements to the administration of justice; and
(d)
for such other programs for the benefit of the public and the legal system of the

state as are specifically approved from time to time by the Supreme Court of Louisiana.

(4)

The Louisiana Bar Foundation shall prepare an annual report to the Supreme Court of Louisiana that summarizes IOLTA income, grants, operating expenses and any other problems arising out of administration of the IOLTA program. In addition, the Louisiana Bar Foundation shall also prepare an annual report to the Supreme Court of Louisiana that summarizes all other Foundation income, grants, operating expenses and activities, as well as any other problems which arise out of the Foundation's implementation of its corporate purposes. The Supreme Court of Louisiana shall review, study and analyze such reports and shall make recommendations to the Foundation with respect thereto.

B. Rules for Lawyer Disciplinary Enforcement (Louisiana Supreme Court Rule XIX) With amendments through January 27, 2016

Section 28. Maintenance of Trust Accounts by Lawyers; Access to Lawyers' Financial Account Records; Overdraft Notification.

A. Clearly Identified Trust Accounts in Financial Institutions Required.

(1) Lawyers who practice law in Louisiana shall deposit all funds held in trust in a bank or similar institution in this state, or elsewhere with the consent of the client or third party, in accounts clearly identified as "trust" or "escrow" accounts, referred to herein as "trust accounts," and shall take all steps necessary to inform the depository institution of the purpose and identity of the accounts. Funds held in trust include funds held in any fiduciary capacity in connection with a representation, whether as trustee, agent, guardian, exec
utor or otherwise. Lawyer trust accounts shall be maintained only in financial institutions that execute the agreement described in paragraph D below.

(2) Every lawyer engaged in the practice of law in Louisiana shall maintain and preserve for a period of at least five years, after final disposition of the underlying matter, the records, check stubs, vouchers, ledgers, journals, closing statements, accounts or other statements of disbursements rendered to clients or other parties with regard to trust funds
or similar equivalent records clearly and expressly reflecting the date, amount, source, and explanation for all receipts, withdrawals, deliveries and disbursements of the funds or other property of a client.

B. Access to Lawyers' Financial Account Records.

Every lawyer practicing or admitted to practice law in Louisiana shall, as a condition thereof, be conclusively deemed to have consented to the production by the depository institution of records of all financial accounts maintained by the lawyer in any bank or similar institution, and

the overdraft reporting requirements mandated by this rule.

C. Request for Production of Records.

A request by disciplinary counsel directed to a bank or other financial institution for production of records pursuant to this Section shall certify that the request is issued in accordance with the requirements of this Section and Section 29 of these Rules of Lawyer Disciplinary Enforcement.

D. Overdraft Notification Agreement Required.

A financial institution shall be approved as a depository for lawyer trust accounts if it files with the Board an agreement, in a form provided by the Board and approved by the Court, to report to the Office of Disciplinary Counsel whenever any properly payable instrument is presented against a lawyer trust account containing insufficient funds, irrespective of whether or not the instrument is honored. The Board shall administer securing participation of the financial institutions, and shall annually publish a list of the financial institutions that have executed overdraft notification agreements with the Board. No trust account shall be maintained in any financial institution that does not agree to so report. Any such agreement shall apply to all branches of the financial institution and shall not be cancelled except upon thirty (30) days notice in writing to the Board. Notification of trust or escrow account overdrafts shall be made in accordance with La. R. S. 6:332 and La. R. S. 6:333(F)(16).

Section 29. Verification of Financial Accounts.

A.

Generally.

Whenever disciplinary counsel has probable cause to believe that financial accounts of a lawyer that contain, should contain, or have contained funds belonging to clients or third parties have not been properly maintained or that the funds have not been properly handled, disciplinary counsel shall request the approval of the chair of a hearing committee selected in order from the roster established by the board to initiate an investigation for the purpose of verifying the accuracy and integrity of all accounts maintained by the lawyer in any bank or similar institution. If the reviewing member approves, counsel shall proceed to verify the accuracy of the financial accounts. If the reviewing member denies approval, counsel may submit the request for approval to one other chair of a hearing committee selected in order from the roster established by the board.

B. Confidentiality.

Investigations, examinations, and verifications shall be conducted so as to preserve the private and confidential nature of the lawyer's records insofar as is consistent with these rules and the lawyer client privilege.

Appendix F to Disciplinary Rules: Supreme Court of Louisiana Trust Account Disclosure & Overdraft Notification Authorization

Pursuant to the inherent, plenary and Constitutional authority of the Louisiana Supreme Court to regulate the practice of law, and in accordance with Supreme Court Rule XIX, every attorney

licensed to and engaged in the practice law in Louisiana is required to disclose the existence of a trust or escrow account (or declare that because of the nature of his/her practice that he/she is not required to maintain such an account). Every attorney who maintains a trust or escrow account as required by the Rules of Professional Conduct is required to maintain such account with a federally insured financial institution with whom the attorney has executed an agreement which authorizes the financial institution to provide written or electronic notification to the Office of Disciplinary Counsel of any account overdraft. Use of this form complies with the rules of the Louisiana Supreme Court.

C. From the Trust Account Disclosure & Overdraft Notification Authorization Form:

A. All attorneys holding funds of clients or third persons must maintain a separate account for such funds (commonly referred to a trust or escrow account);

B. Every attorney maintaining a qualified pooled trust or escrow account must participate in the
Interest on Lawyers Trust Account (IOLTA) Program administered by the Louisiana Bar Foundation; and

C. All attorneys who are required to maintain trust or escrow accounts must do so with federally insured financial institutions with which they have executed agreements requiring the financial institutions to provide to the Office of Disciplinary Counsel written or electronic notification of any overdraft incident created on such accounts.

(Notice to Financial Institution:
Pursuant to Legislative Act 249 of the 2005 Regular Session, notice to the Office of Disciplinary Counsel shall be issued after five (5) business days have passed from the date of notice to the attorney, and whether or not the account remains in overdraft status; but such notice will not issue where the overdraft was created solely by bank charges imposed or when charges are imposed through bank error. Costs associated with providing this notice may be charged to the attorney and deducted from the interest created on the trust or escrow account. The act provides that no civil or criminal action may be based upon a disclosure or non-disclosure of financial records made pursuant to the Act.)

SESSION 9
MUSIC LICENSING

28th Cutting Edge Entertainment Law Seminar

The Pandemic REDUX
LIVE and Online

"Music Licensing in Today's World"
By Jeff Brabec and Todd Brabec

In the Music Business, rates, fees and values are determined in a number of different ways as well as in a number of different venues- these include Negotiation between individuals, entities and industry organizations, Rate Courts, Copyright Royalty Boards and Tribunals, Statutory licenses, legislation, anti-trust and civil litigation, industry practice, government intervention, mandatory arbitration, mediation, organization governing documents, payment schedules and internal policies, competition, foreign country laws and practices, among other factors and considerations. Regardless of how royalties and rates are negotiated and/or set and by whom, the end result is a royalty or fee paid to the music publisher, the songwriter, the composer, the label and the artist. The following Income Chart illustrates many of the types of income that can be generated from specific types of music uses.

Potential Songwriter/Publisher/Recording Artist Gross Income

$	U.S. single sales (100,000 downloads)
	U.S. album sales (200,000 copies)
	Interactive streaming mechanicals
	U.S. radio and TV performances and
	Streaming Royalties
	Foreign single sales
	Foreign album sales
	Foreign radio and TV performances
	Sheet music, folios and print
	Commercial
	Television series all media excl. theatrical license
	Motion picture use
	Foreign theatrical film performances
	Broadway show
	Video game synch fee
	Video game royalties plus advance
	Ringtones and Ringbacks
	Lyric reprint in a novel
	Toys, dolls and greeting e-cards
	Karaoke
	Motion picture scoring fee
	Foreign theatrical score royalties
	U.S. television score royalties
	Internet and miscellaneous
$	**Total writer and publisher royalties**

		Motion picture sound recording master use
		Recording artist royalties (digital/physical sales)
		Interactive Streaming royalties
		SoundExchange artist royalties
		SoundExchange producer royalties
$	4,115,375	**Total gross income**

If you're a songwriter, writer/artist, music publisher, or record company it is essential that you know the type of email or call that you will receive from a music supervisor or licensing clearance person representing an audio visual production that is considering using your song or master. As a starting point, following are a few examples of what the request may contain and some of the issues involved.

Television :

- Identity of Production Company
- Identity and Nature of Program (dramatic, music/dance centric, late night, morning, etc.)
- Episode Number
- Synopsis of Series
- Identity of Composition
- Scene Description
- Use of the Composition in the scene or scenes (visual vocal, background vocal, instrumental, theme, change of lyrics, etc.)
- Duration of the Use (30 seconds, full usage, 20 seconds plus 15 seconds in multiple uses, etc.)
- Territory (world or universe, U.S. and Canada, Internet, additional territories to be added on an option basis, etc.)
- Term (life of copyright, 2 years with options to extend for longer periods, etc.)
- Media Rights Requested (worldwide all media including downloads and streaming, U.S. and Canada television with options to extend into additional media, out-of-context, etc.)
- Fee ($500, $5,000, $12,000, $25,000, $50,000, etc.)

Motion Pictures:

- Identity of Production Company
- Identity of the Film
- Synopsis of the Film
- Identity of Composition
- Scene Description (what is actually occurring in the scene where the song is being used)
- Use of the Composition in the scene or scenes (visual vocal, background vocal, background instrumental, visual instrumental, theme, change of lyrics, etc.)
- Duration of the Use (30 seconds, full usage, 20 seconds plus 15 seconds in multiple uses, etc.)
- Territory (world or universe in most cases other than film festival or step deal licenses)
- Term (life of copyright of the song in virtually all cases other than in film festival or step deal licenses)
- Rights Requested (worldwide all media is the norm/sometimes known as “broad rights” which includes home and personal video, out-of-context trailers, etc.)
- Fee ($500, $5,000, $12,000, $25,000, $75,000, $100,000, $250,000, etc. The fees depend upon bargaining power, the music budget, the importance of the song to the project, and the use, among other factors.)
- Opening Credit Use
- Closing Credit Use
- Whether It is a Major Film Company, Indie Company or Documentary

Video Games:

- Identity of production company
- Identity of the video game
- Synopsis of the video game
- Identity of composition

- Use of the composition in the scene or scenes (visual vocal, background vocal, instrumental, theme, etc.)
- Duration of the use (up to full usage, multiple uses, etc.)
- Territory (world or universe)
- Term (life of copyright, 7 years, 10 years, etc.)
- Effective date of term (many times with a tentative date)
- Rights requested (all gaming platforms, operating systems, devices or methods of distribution with options to edit, cut, loop or otherwise excerpt portions of the composition as required for gameplay features, downloadable content ("DLC"), etc.)
- One-time fee ($500, $5,000, $12,000, $25,000, etc.)
- Royalty based games (music and dance centric games) 1¢, 2¢, 3¢, etc. per unit
- Advance where applicable (on 500,000 units, 1,000,000 units, etc.)

Sources of Income:

As you can see from the Income Chart at the start of this article, there are many areas where songwriters, composers, music publishers, artists and record companies generate income. Three of the primary ones are "synch" licenses, the basics of which we have covered above, performances and the various configurations of mechanicals. As to the areas of performances and mechanicals, both are experiencing changes which we will now address.

Additional information on all areas set forth in this article can be found in "Music, Money and Success: the Insiders Guide to Making Money in the Music Business" (Jeff and Todd Brabec/ 8th edition/ Schirmer Books/ Music Sales/ Wise Music).

SESSION 10
FILM AGREEMENTS

28th Cutting Edge Entertainment Law Seminar

The Pandemic REDUX
LIVE and Online

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May 17, 2016

Via e-mail
toddbrabec@gmail.com
Mr. Todd Brabec

Via e-mail
eic.lawreview@mitchellhamline.edu
Editor in Chief, Mitchell Hamline L. Rev.

Re: The Performance Right—A World in Transition
By: Todd Brabec
Originally published at 42 Mitchell Hamline L. Rev. 16 (2016)

Dear Mr. Brabec and Editor:

The referenced article has been judged one of the best law review articles related to entertainment, publishing and/or the arts published within the last year. As such, it has been selected for inclusion in the 2016 edition of the ENTERTAINMENT, PUBLISHING AND THE ARTS HANDBOOK, an anthology published annually by Thomson Reuters (West). As editor of that HANDBOOK, I am privileged to congratulate you on the selection.

If you are agreeable to the reprinting of your article in the HANDBOOK, please complete the attached form indicating your permission. Please return the form to me by return e-mail (in PDF) if possible or by mail at my address above. Also, West requests a PDF of the article, or two actual reprints of the article or copies of the law review issue containing your article, from which they may create proofs to print your article in the HANDBOOK. Photocopies and scanned copies cannot be used. Print ready electronic copies are preferred. I would appreciate your sending me the PDF of your article by the internet, or if easier for you, two reprints or two copies of the issue by UPS, FedEx, USPS, or other overnight courier, *next day standard delivery*. Please feel free to bill me for the overnight shipment (as recipient)—please call me for a charge number for your use. I need to receive your reprint permission and the reprints or copies of the issue by **May 26, 2016**.

Again, congratulations on the selection of your article as one of the best of those recently published. I look forward to including it in the HANDBOOK. Please call me at (713) 658-9323 (office) or (832) 798-7576 (cell) if you have any questions.

Sincerely yours,
/s/Karen B. Tripp
Editor, ENTERTAINMENT, PUBLISHING AND THE ARTS HANDBOOK 2016

ADVISING THE BEGINNING INDEPENDENT FILMMAKER

Thomas R. Leavens
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Chicago, Illinois 60601
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I. PERSONAL ASSESSMENT – The seasoned know the importance of this assessment.

A. Available time commitment – ability to see project through to completion.

B. Personal inventory – discipline, perseverance, resourcefulness, stability, adaptability, equanimity, comportment.

C. Sales prowess – ability to enchant.

D. Credibility of experience and extent of knowledge.

E. Credibility of venture

F. Willingness to ask favors (and more) of family and friends.

G. Ability of family and friends to provide favors (and more).

II. PUTTING RIGHTS IN ORDER

A. Secure rights in story or script.

B. Secure rights in other necessary film elements, i.e., life story, book adaptation, music, other footage, etc.

C. Don't give up rights prematurely – meaning, don't give outright grants of rights in one's project but instead provide options based upon critical conditions.

D. Issues to explore:

1. If personal story rights are critical, what is level of cooperation of key person? Any health issues? Will want to have person available not only for purposes of production, but for promotional purposes as well when film is launched.

2. Any archival material or documents or artifacts required? If so, any access complications?

3. Any story verification issues – how will story be backed up if challenged?

4. Any special location access complications?

5. Any secrecy, non-disclosure, or non-competition issues with respect to any member of the production team or key subject?

6. What pre-existing material will be incorporated in the film – footage, photos, music – and what terms will be available for their use?

7. Any time constraints on the availability of any person or material, or the timeliness of the film subject?

8. Any competing projects that the producers are aware of?

9. Any adverse claims made with respect to the production of the film?

10. Any aspect of the film developed within the scope of any contributor's employment, or developed with the assets of another?

11. Who have been contributors to the script, and what have been their contributions? What has been the intention of the contributors with respect to the ownership of their contributions – rights retained separately, or has there been a merger of rights?

12. Has the script been circulated for comments, what comments have been received, and in what form, and what has been done with the comments?

13. Any copyright registrations undertaken? If so, who is claimant and what other information is disclosed, such as pre-existing works?

14. Any title searches undertaken? Any title registrations done?

15. Any intent-to-use trademark applications undertaken for ancillary products?

16. Any URLs obtained?

17. Any social media accounts set up?

18. Any personal issue with respect to any potential claimant to the film or production entity that might impact rights in the film or production entity?

    a. Grant of general security interest to collateralize an obligation.

    b. Marital separation or divorce proceeding.

    c. Bankruptcy

    d. Health or disability

III. ASSEMBLING (OR DISASSEMBLING) THE PRODUCING TEAM

A. Identify the members of the producing team.

B. Determine respective rights and responsibilities.

C. Distinguish producing functions from other roles, such as directing, writing, etc.

D. Distinguish co-ownership of project from percentage income interest in project, such as percentage of profits.

E. Attaching others to (or detaching others from) the project

F. Resisting the urge to be egalitarian or too inclusive.

IV. DEVELOPMENT OF PRODUCING ENTITY

A. Identify the entity from which the project originated – individual, general partnership (perhaps undeclared), within scope of employment, etc.

B. Identify the entity that will undertake pre-production activities as producing team emerges – a new general partnership, LLC, or corporation, or certain producing team members may be merged into existing entities, or existing entities may employ other members of the producing team.

C. The actual entity that obtains production funds and produces the film may be the same entity that originated and developed the project or a new entity that obtains rights developed by the originating entity and in which the originating entity becomes a partner, unit interest holder, or shareholder.

V. REALISTIC POTENTIAL FINANCING SOURCES

A. Unlikely sources and why:

1. Commercial finance companies – the producing entity generally does not have business assets to loan against or sell.

2. Venture capital firms – few fund individual projects, and they generally can't investigate and control the project as they might other investments.

3. Debt instruments – producing entity generally does not have forecastable revenue.

4. Unsecured bank financing – new venture, and high risk.

5. Government funding – not there, unless operate as a not-for-profit.

B. Likely sources:

1. Personal funds

2. Personal loans secured by personal or business assets or assets of friends or family.

3. Loans from friends or family

4. Investors

5. Presale of rights

6. Financing of tax credit

7. Co-production agreements – like a pre-sale, but not to a rights user.

8. Loans secured by pre-sold rights – guarantees under such agreements can secure a loan.

9. Contributions through fiscal sponsors. www.fracturedatlas.org; www.fiscalsponsordirectory.org.

10. Crowdfunding web sites

C. Assessing potential for pre-selling rights.

1. Suitability of project for pre-sale (ability to meet theatrical release requirements, genre, foreign values, rating, etc.)

2. Foreign rights vs. domestic rights

3. Advance funding, guarantees, or letters of support.

4. Fractionalized agreements (separate parties get rights to home video, cable, broadcast, etc.) vs. all rights to distributor.

5. Selling potential profit to finance film?

a. Upside reduced in exchange for certainty of funds

b. Possible impairment of ability to sell other rights

c. May trigger residual payments to talent

D. Assessing availability of bank financing secured by pre-sales.

1. Domestic vs. multiple foreign territory sales

2. Creditworthiness and production history of buyer.

3. Availability of letter of credit to fund pre-sale obligation.

4. Availability of completion bond, either to complete project or fund short fall

5. Availability of insurance coverage to fund producer breaches of warranty.

VI. UNDERSTANDING THE INVESTOR'S POINT OF VIEW

A. Investors risk present assets for the promise of future benefits. The producer must project to the investor the value of his or her proposal and instill confidence in the investor in the predictability and potential of the project's success. The producer must be prepared to give the investor full information, good and bad, to allow the investor to make an informed investment decision.

B. The producer controls the circumstances of how his or her project is developed and marketed; the investor does not. Thus, the investor views the risks of production and financial return as greater than the producer does.

C. Film financing must be judged on the economic merits of a project, since there are no significant tax incentives to cause an investor to invest regardless of the likely success of the project.

D. Investors know film success is dependent upon public taste, which is unpredictable and subject to change without warning or explanation. Further, information about the film production industry as a whole and the experience of individual independent film productions is imprecise and anecdotal. Consequently, producers sell into a market where investor perceptions have been forged to reflect the belief that film investments are risky ventures.

E. Since financing is generally done on a film-by-film basis, there is little or no business history (balance sheet, income statement, management stability and performance, etc.) for an investor to investigate as part of his or her due diligence, which usually results in an investor ultimately putting his or her faith in the assessment of the personal skills and reliability of the producer to develop and produce the film.

F. Unless the principals of the project risk what to the investor's mind appears to be a significant loss (either financial or otherwise) if the project is not properly handled to completion, the investor may lack confidence in the principal's long term commitment to the project.

VII. WHAT THE PRODUCER SHOULD DO BEFORE SEEKING INVESTORS.

A. Identify the producing team.

B. Secure rights.

C. Obtain professional feedback on marketability of project.

D. Establish relationship with professional advisors.

E. Gather and gauge level of support and financing available from family and acquaintances.

F. Prepare business plan, including development of likely projections of income gauged to expected performance of film and source and amounts of revenue.

G. Have budget vetted.

H. Consider producing a trailer.

VIII. WHAT THE PRODUCER SHOULD NOT DO BEFORE SEEKING PROFESSIONAL ADVICE – CHECK TO SEE IF ANY OF THESE HAVE OCCURRED.

A. Place advertisements looking for money

B. Conduct an unsolicited mailing or other general quest for financing.

C. Convey rights in script or story.

D. Promise a position or responsibility to people beyond that which the producer can deliver.

E. Engage a fund raiser.

F. Accept money from an investor.

G. Sign any written agreement.

H. Give a written agreement to somebody to sign

IX. POTENTIAL CONSEQUENCES OF DOING IT WRONG.

A. Return of investor funds.

B. Cloud on title adversely affects marketability of film.

C. Funds from rights users (distributors, licensees, etc.) may be withheld pending resolution of conflicting claims.

D. Expense and inconvenience of defending lawsuits.

E. Costs erode or consume entirely potential profit of project.

F. May be required to compromise legitimate claims in exchange for other interests.

G. Get cut out of transaction.

H. Diminishment of professional credentials.

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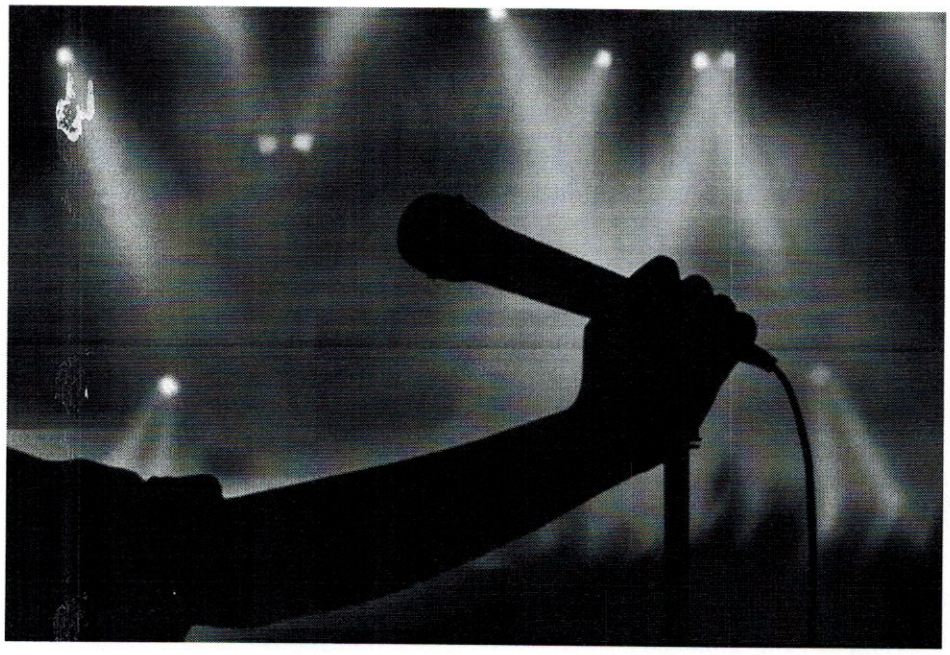


Unique Aspects of Labor Law in the Entertainment Industry

BY HOWARD D. FABRICK

The title of this article presupposes that there exists some well-defined and universally recognized definition of the "entertainment industry." There is no such definition but rather diverse forms of entertainment, each with its own definition. The classic story about the circus elephant keeper is illustrative. At his retirement party when asked how he could have spent 40 years following the elephants with a shovel and wheelbarrow, he replied, "I love being in show business."

The definition of "entertainment industry" is comparable to the definition of beauty—it's often in the eye of the beholder. There are a multitude of activities that fall within the very broadest definition of the term. It could be defined as every activity on which the public spends its leisure time dollars. The hotels in Las Vegas consider themselves to be in the entertainment industry, as do Carnival and Princess cruises.

CONTINUED ON PAGE 30

The Performance Right

A World in Transition

BY TODD BRABEC

Section 106 of the Copyright Act provides:

> Subject to sections 107 through 122, the owner of a copyright under this title has the exclusive right to do and to authorize any of the following:
>
> (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly; [and]
>
> (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.[1]

These two exclusive rights of copyright are at the heart of the worldwide business of music. They involve musical compositions and sound recordings, the rights of copyright owners and limitations on those rights, and how creators and copyright owners are compensated.

CONTINUED ON PAGE 37

continued frome page 1

THE MUSIC BUSINESS PRE-DIGITAL

In the world of traditional media—radio and television primarily—the music licensing process has evolved into a fairly straightforward process. For musical compositions, songwriters, composers, and music publishers join or affiliate with ASCAP, BMI, or SESAC (performing rights organizations or PROs), which negotiate license agreements for the use of music, collect the fees, and distribute them back to writers and publishers who have performances in specific media. If the PRO and a user cannot come to an agreement as to license fees, courts intervene and determine "reasonable fees" for music use.

In the area of sound recordings, performances on traditional over-the-air radio are exempt from royalties and considered as "promotional" tools to drive sales. A record company's main source of income, other than record sales, comes from the licensing of master recordings to television series, feature films, and advertising commercials, among other uses. And then came the online/digital world—a technological revolution that changed everything.

A rather simplistic view of the music business, but one that serves as an appropriate starting point for an increasingly changing and complex business.

MUSICAL COMPOSITIONS

In the United States, there are three primary organizations that represent songwriters, composers, and music publishers on a nonexclusive basis in the negotiation, collection, and distribution of music performance license fees. The organizations are the American Society of Composers, Authors and Publishers (ASCAP, 1914); Broadcast Music, Inc. (BMI, 1939); and SESAC (1930). They are referred to as performing rights organizations (PROs). The primary sources of license fees are traditional radio, broadcast and cable television, and general licensing (live performance, music in bars and restaurants, etc.).

New media license fees, which include online and digital music services, currently represent a relatively small portion of U.S. domestic music license fees (approximately $100 million of a total annual U.S. domestic PRO collection of $1.4 billion). Royalty distributions are made 50 percent to writers and 50 percent to music publishers after operating costs are taken into account (approximately 12–13 percent in the case of ASCAP and BMI). There is a PRO in practically every country of the world where, via reciprocal agreements with ASCAP, BMI, and SESAC, U.S. writers' and publishers' works are represented and paid for when performances occur in foreign territories.

In the case of ASCAP and BMI, both entered into consent decrees with the government in 1941, with amendments to those decrees in 1950, 1960, and 2001 in the case of ASCAP, and in 1966 and 1994 for BMI. One aspect of these decrees that has had a significant effect on the determination of license fees is the existence of a separate "rate court" for ASCAP and for BMI, which comes into play when the PRO and a music user cannot come to a negotiated agreement as to what "reasonable" license fees should be in any given area. The decree allows any party to apply to the court (U.S. District Court for the Southern District of New York) for a determination of interim and final fees. These rate courts have been in existence with ASCAP since 1950 and with BMI since 1994, and have determined fees and license terms for the major traditional media areas of radio and broadcast and cable television, as well as, in recent years, the online music community. It is in these latter "new media" decisions and settlements where most of today's complex issues have arisen.

SESAC, the smallest of the U.S. PROs, operates on a for-profit basis as opposed to the nonprofit operations of ASCAP and BMI, is not governed by a consent decree with the government, and does not have a "rate court"–type procedure for license fee adjudications and disputes. Under a recent October 2014 settlement with the Television Music License Committee (TMLC) regarding a class action antitrust suit involving local television stations though, SESAC has agreed to binding arbitration for any future licensing fee disputes with the settlement class that cannot be resolved by negotiation. It was further agreed that SESAC could not interfere with the ability of any affiliate to issue a public performance rights license directly to a settlement class member. A final settlement approval hearing is set for March 2015 in the U.S. District Court for the Southern District of New York.[2]

In the online world of music licensing, the ASCAP rate court has been instrumental in deciding not only what "reasonable" license fees should be but also what is actually licensable by the U.S. PROs. Interim fee and final fee decisions have involved many of the biggest players in the "new media/technology" world and have resulted in license fees significantly below what the PROs and copyright owners were requesting. To put the online fees into perspective, ASCAP, BMI, and SESAC collected approximately $1.4 billion in domestic U.S. license fees (radio, broadcast and cable television, live, etc.). Of this amount, approximately $100 million was generated from all online/digital uses. An additional $700 million is received each year by the U.S. PROs from foreign collection societies (PRS, GEMA, SACEM, SIAE, SGAE, SOCAN, APRA, IMRO, etc.) for performances of U.S. writers' works performed in foreign countries, with a small portion of that money attributable to online uses. Most publishers, incidentally, collect their foreign country performance royalties directly from those societies as direct members or through subpublishers.

Commencing with the 2007 AOL/RealNetworks/Yahoo case, rate court filings, hearings, and decisions have involved YouTube, MobiTV, AT&T Mobility, Verizon Wireless, Spotify, Ericsson, and Netflix, among others.[3] A brief summary of some of the most important points of these cases should help in understanding the current status of online performance licensing:

The AOL/RealNetworks/Yahoo rate court case had major worldwide significance, as there was a summary judgment ruling that the downloading of a music file did not constitute a public performance under the Copyright Act—a ruling totally contrary

to the laws of most other countries with the exception of Canada.[4] This decision was affirmed by the Second Circuit Court of Appeals,[5] with cert denied by the U.S. Supreme Court.[6] The Second Circuit also remanded the fee formula back to the district court for further proceedings.

The 2009 Verizon Wireless rate court case reaffirmed the AOL "no performance in a download" decision in a ruling that stated that the transmission of a ringtone to a cellular telephone customer did not constitute a performance, and that the mechanical ringtone rate of $0.24 per download was the only appropriate right and compensation involved.[7] The primary issue of the 2009 AT&T case was whether previews of ringtones were to be considered "fair use" rather than licensable performances.[8] The court ruled in favor of ASCAP, and a customer's previewing of ringtones was therefore licensable by the PROs. An interim fee 2009 decision regarding YouTube was a good example of the size of court-set "reasonable" music license fees, with an order of $70,000 a month.[9]

The 2010 MobiTV case involved what a reasonable license fee should be for the delivering of television programming to mobile telephones and audio channels. In this case, the court returned to the early 1990s ASCAP performance licenses with Turner Broadcasting that set a three-tiered license based on the music intensity of the program. The music intensive fee was 0.9 percent of defined revenue, with 0.375 percent for general entertainment and 0.1375 percent for news and sports programming.[10] The Second Circuit affirmed the lower court decision.[11]

All of the aforementioned cases were eventually settled, with additional settlements and agreements entered into with Apple, Rdio, Spotify, Netflix, Hulu, and others. Practically all settlements in this area are confidential.

DMX and Pandora

Two additional rate court cases, DMX and Pandora, involved not only the determination of reasonable license fees but also the role that direct licensing plays in the PRO licensing picture. Under the ASCAP and BMI consent decrees, the agreements that writers and music publishers sign with ASCAP and BMI are nonexclusive—members and affiliates are allowed to directly license their works to a music user and bypass the PRO structures entirely.

DMX is a leading background and foreground music service provider that provides preprogrammed music for business establishments via direct broadcast satellites or on-premises delivery mechanisms. DMX hired a company to assist and design a direct licensing program with copyright owners that eventually resulted in direct licenses representing over 7,000 catalogs, including one major music publisher, Sony. DMX was requesting from ASCAP and BMI a "through-to-the-audience" blanket license that reflected the DMX direct licenses already obtained as well as those to be negotiated in the future.

In July 2010, the BMI rate court entered a final rate for the blanket license subject to adjustment of DMX's BMI performances directly licensed.[12] In a separate decision, the ASCAP rate court ruled that ASCAP is required to issue to DMX a blanket license with "carve-outs" for the direct licensing program.[13] Both decisions were appealed to the Second Circuit, which in June 2012 affirmed the district court decisions.[14] The resulting rates significantly reduced the license fees that DMX was paying to ASCAP and BMI.

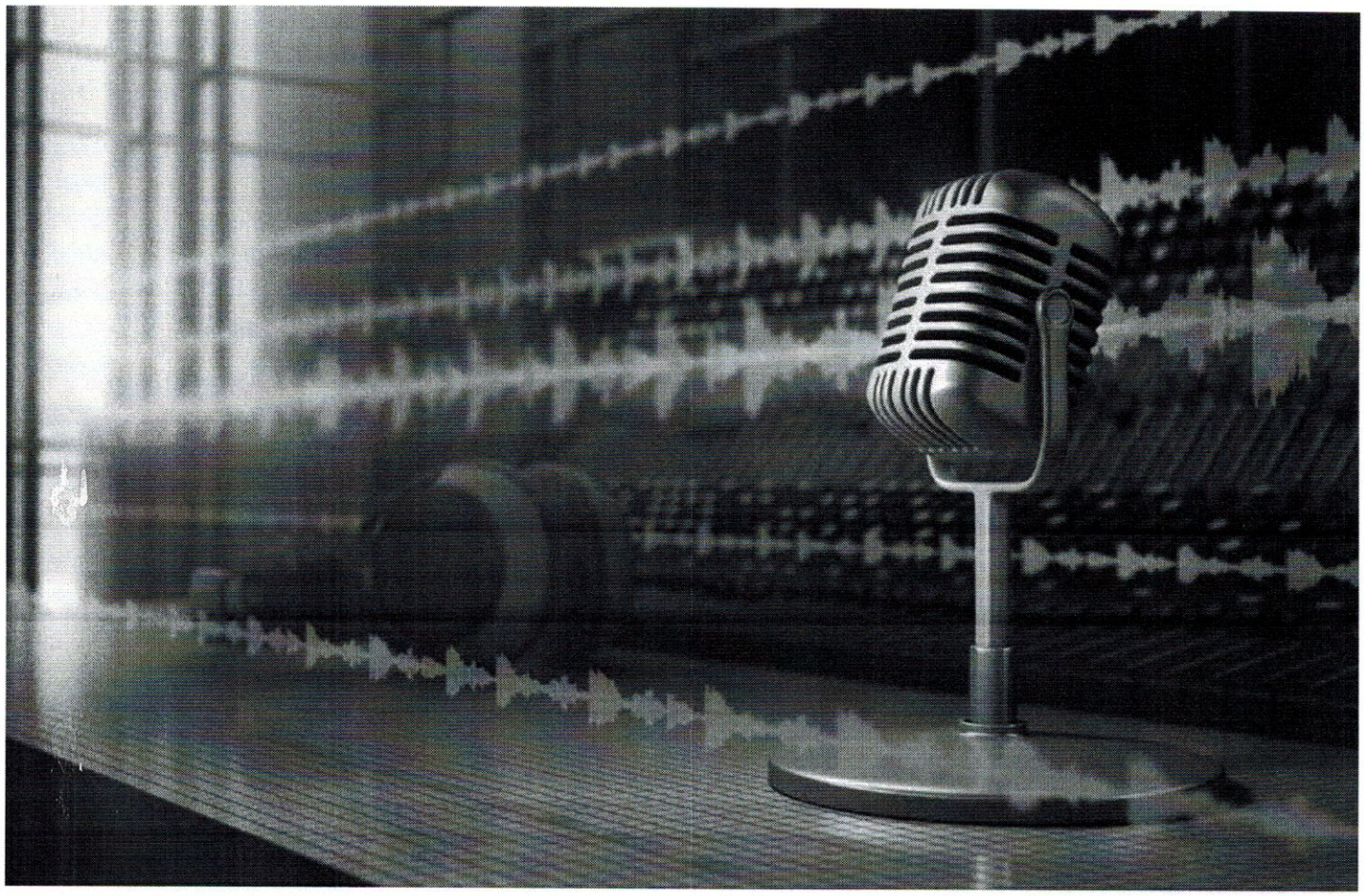
Pandora is the leading Internet customized radio service and is considered a noninteractive service as opposed to an on-demand/interactive service where the user chooses what he or she wants to hear. Pandora entered into license agreements with both ASCAP and BMI in 2005 and terminated those licenses at the end of 2010 and 2012, respectively. In the case of ASCAP, Pandora applied to the court for a through-to-the-audience blanket license for the period 2011 through 2015. In the case of BMI, Pandora filed an application for a five-year license commencing January 1, 2013.

Based primarily on the small license fees that were awarded by the ASCAP and BMI rate court judges commencing with the AOL/RealNetworks/Yahoo case in 2007, the major music publishers, starting with EMI (later acquired by Sony), notified ASCAP and BMI that they were withdrawing their catalogs for online licensing purposes. The majors felt strongly that they could negotiate more financially acceptable online value deals than the arrangements that had been set by prior rate court decisions and the subsequent settlements emanating from those decisions. These online media withdrawals were accomplished by specific changes in the rules, regulations, and practices of ASCAP and BMI. Upon withdrawing their works, a number of the publishers entered into direct licensing deals with Pandora, in effect creating a system whereby Pandora had licenses with ASCAP, BMI, and SESAC, as well as short-term negotiated direct performance licenses with the major publishers. Discussions were also held between ASCAP, BMI, and the major publishers with a view toward ASCAP and BMI handling the administration of the online licenses negotiated by the publishers.

In response to a motion for summary judgment in September 2013, Judge Cote, the ASCAP judge, ruled that a selective withdrawal of new media rights by publisher members could not be implemented without violating the consent decree, and further that the ASCAP repertory subject to that license is all works in ASCAP at the time Pandora applied for a license (January 1, 2011)—not when the final license is arrived at.[15] In short, an application for a license is treated as a license in effect, and in this case no works could be removed by any ASCAP member during the period 2011 through 2015. And when works are finally removed by any publishers, those works have to be removed for all licensing purposes, not just for online licensing. Any users with license agreements still in effect at the time of the withdrawal could continue to use the withdrawn works up until their specific license agreement expires.

In a similar motion for summary judgment in the BMI case, Judge Stanton allowed the removal of works that occurred prior to January 1, 2013, but ruled that those works could not be licensed by BMI to any others after any existing license agreements expired.[16] If BMI cannot offer those compositions to new media applicants, their availability does not meet the standards of the BMI decree and they cannot be held in the BMI repertory. The BMI-Pandora rate court trial is set for 2015.

To put both judges' "all in or all out" summary judgment decisions into real world perspective, if one were to remove works from the current $100 million PRO annual license fee area of the online world, one would be forced eventually to remove those works from the other $1.3 billion in PRO domestic license fees being generated by traditional media (radio,



broadcast and cable television, live, etc.). Not to mention the effect that such withdrawals would have on the reciprocal "flow through of money" agreements between foreign collection societies and the U.S. PROs. As a point of reference, it is important to note that practically all new PRO licensing deals with traditional media (radio, television, etc.) include streaming, website music uses, mobile apps, digital and primary broadcasts, mobile and wireless platforms, webcasts, and multicasts.

On March 14, 2014, Judge Cote issued her "determination of reasonable license fees" 136-page decision in the ASCAP-Pandora rate court case.[17] The judge ruled that the appropriate fee for the years 2011–2015 was 1.85 percent of revenue less certain deductions. ASCAP had requested a rate of 1.85 percent for 2011 and 2012, 2.5 percent for 2013, and 3 percent for 2014 and 2015. Pandora had requested a rate between 1.7 percent (the current traditional radio rate—Pandora had acquired a small radio station in an attempt to qualify for this rate) and 1.85 percent (the ASCAP form rate in effect for Pandora since 2005).

Two of the more important issues in the Pandora rate court proceedings involve the concept of the divisibility of copyrights, which allows a publisher/copyright owner to make deals with various classes of users for their catalog, and the disparity in payments between artists and record companies and songwriters and music publishers for the same type of performance.

As to the latter issue, the AOL/RealNetworks/Yahoo 2007 rate court case provided evidence of the over $30 million paid by these services to the major record companies over a two-year period, whereas their fees to the PROs were, in comparison, very small. As to Pandora, the company expended in 2013 approximately $315 million of its total revenue of $600 million on content acquisition. Of that amount, close to $290 million went to SoundExchange for artists and record companies, with all three PROs collecting a total of less than $25 million for songwriters and publishers. As a point of additional reference, total 2013 limited performance right statutory royalties to SoundExchange were $650 million in addition to significant record company interactive streaming license fees and payments negotiated with the services, whereas combined ASCAP, BMI, and SESAC revenue for all new media uses from all licenses and services was less than $100 million.

In July 2014, ASCAP, along with Universal Music Publishing, Sony/ATV Music, and EMI Music as intervenors, filed an appeal from the two district court opinions with the Second Circuit.[18] The basis of the appeal was that the district court erred in ruling that the amended final judgment of 2001 prohibited ASCAP from accepting partial grants of public performance rights, and that the district court in setting a final license fee ignored recent arms-length relevant benchmark agreements.

As to the "partial grants" prohibition, ASCAP's position was that the consent decree long ago removed any prohibition on the right of members to reserve for themselves the right to grant exclusive licensing rights to music users. Further, such a

prohibition is in direct conflict with the exclusive rights provided by the copyright law to copyright owners.

As to the issue of ignoring benchmark agreements in the setting of final reasonable license fees, ASCAP pointed out that the Universal Music, Sony/ATV Music, and EMI Music Pandora direct license deals were all in excess of the 1.85 percent court set fee, as was the 2013 negotiated ASCAP Apple iTunes radio license—all "arms-length willing buyer and willing seller agreements." Further, the Second Circuit, in its 2010 RealNetworks/Yahoo decision, confirmed that a 2.5 percent rate was a valid benchmark even though it vacated the district court's across-the-board application of that rate to all of RealNetworks' and Yahoo's services.[19] Accordingly, the current district court erred in ignoring the Second Circuit's guidance in RealNetworks/Yahoo, which established that a rate of 2.5 percent revenue (or higher) is reasonable for all-audio, music-intensive digital music services similar to Pandora's.

Direct Licensing

The ability of a copyright owner to directly license a work to a music user and bypass the PROs was a major issue in the ASCAP and BMI DMX rate court decisions as well as the current Pandora litigation. Language in both the ASCAP and BMI consent decrees guarantees the right of any member or affiliate to directly license their works to a user. SESAC, as it is not under a consent decree with the government, incorporates language in its writer and publisher affiliation agreements that insures the right to directly license—"publisher retains the right to issue nonexclusive licenses directly to any third person for the public performance in the United States, its territories and possessions, of any work subject to this Agreement."

When songwriters, composers, and music publishers join or affiliate with ASCAP, BMI, or SESAC, they sign representation agreements granting to the PRO the nonexclusive right to license the nondramatic public performances of their works. Though each PRO contract and governing documents are different as to their terms, length of contract, withdrawal of works and resignation/termination provisions, dispute resolution procedures, payment schedules, distribution rules, and benefits, they all are nonexclusive agreements whereby the writer or publisher can license a work directly. The PROs cannot interfere in any way with this right or the ability to exercise this right.

Language as to the ability to directly license as well as the effect of a direct license has been standard in many types of industry license agreements, including work-for-hire/employee-for-hire contracts, for many decades. A sample clause might read:

> The performing rights in the composition, to the extent permitted by law, shall be assigned to and licensed by the applicable performing rights organization with said organization authorized to collect and receive all monies earned from the public performance of the composition and to pay the writers and publishers directly. If to the extent it is unlawful for the PRO, or any of its affiliates, to issue blanket small performing rights licenses or the applicable performing rights society does not from time to time, for any reason whatsoever maintain a regular system of collecting performance fees and/or a third-party licensee (i.e., a television network, independent television station, digital music service, etc.) requires direct licensing of such rights, company and publisher shall have the right to directly license their respective shares of the public performance rights in the composition to such third parties. If the company or publishing designee receives a distribution of earned public performance fees from any source that does not make a separate distribution directly or indirectly to publisher and to composer, then publisher shall be entitled to receive its portion of such fees and composer shall be entitled to receive the writer's share of such fees.

Additional variations of a direct license clause are as follows:

> Licensee desires to obtain from publisher a blanket license for all necessary performance, reproduction, and distribution rights implicated by the delivery of programming embodying publisher's catalog, and publisher is willing to grant such right to license on a nonexclusive basis.

> The right to publicly perform and to authorize others to perform the composition by means of a media entity not licensed by ASCAP, BMI, or SESAC is subject to clearance of the performing right either from Licensor or from any other duly authorized licensor acting for or on behalf of Licensor subject to good faith negotiations in accordance with established industry customs and practices.

An issue in many agreements is what happens to the writer share when a copyright owner, usually the music publisher, directly licenses a work to a user. Clauses range from "payments to be made based upon the prevailing PRO rates for the specific use," "compensation to be negotiated in good faith," "reasonable fee," "fee subject to arbitration," "a complete buyout with no further compensation or continuing royalties,"or "50 percent of any license fee received."

A further unresolved issue as to an allowable and effective direct license under court or consent decree interpretation involves the situation where a music user (traditional broadcaster, online music service, etc.) contacts a copyright owner directly with the request versus the situation where the ASCAP or BMI copyright owner approaches the user to negotiate a direct license—a fine distinction but an important one in current litigation and consent decree interpretation.

Department of Justice Intervention

In part because of the Pandora decisions, a major development occurred in June 2014 when the Department of Justice (DOJ) announced that it would review both the ASCAP and BMI consent decrees "to account for changes in how music is delivered to and experienced by listeners [and to determine] what modifications would be appropriate."[20] The DOJ allowed a 60-day period for comments from any interested party (music publishers, songwriters and composers, PROs, online service companies, music users of any nature, the general public, etc.).

A cross-section of some of the views was illustrative of the issues as well as the diametrically opposed positions of many of the parties. The comments very much reflected a creators v. users scenario.

On the music user side, the National Association of Broadcasters (NAB), the Digital Media Association (DiMA), Netflix, Fox News, the Radio Music License Committee (RMLC), the National Restaurant Association, and the Consumer Electronics Association, among others, submitted comments. The creator/copyright representative side included comments from the PROs ASCAP, BMI, PRS for Music (U.K.), SOCAN (Canada), JASRAC (Japan), and SIAE (Italy), as well as the Society of Composers and Lyricists (SCL), the Nashville Songwriters Association International (NSAI), the National Music Publishers' Association (NMPA), and the Screen Actors Guild-American Federation of Television and Radio Artists (SAG-AFTRA), among others.

ASCAP, in its comments, requested that the rate court be replaced with a faster and cheaper dispute resolution procedure, that ASCAP be allowed to bundle and license multiple rights (the current decree prohibits ASCAP from licensing any right other than performance) and allow partial grants of rights from its members.[21] The arguments centered on the fact that new media users need multiple rights in their business, that publishers need flexibility to manage rights and negotiate contracts terms, and that property rights are divisible, assignable, and licensable either in whole or in part. BMI, which is not prevented from bundling or licensing multiple rights, requested that publishers be allowed to withdraw digital rights and that a binding arbitration model replace the consent decree mandate.[22]

The SCL (film and television composers and songwriters) was in favor of consent decree changes and expressed concerns that if the major music publishers withdrew completely from ASCAP and BMI, the transparency and accountability of the PRO collective licensing model would be affected, and further that in a bundled rights situation it would be difficult to ascertain the value of the performance right in bundled transactions.[23] Most writers in this field sign "work-for-hire" contracts where the backend performance royalties represent a substantial portion of their income. The 165,000-member organization SAG-AFTRA, the largest labor union representing working media artists, commented that the scales have tipped too far in favor of licensees' interests over those of artists and that the rate setting process set forth by the consent decrees is inefficient, expensive, and burdensome on the PROs, and if not modified will significantly devalue a writer's works.[24]

Sony/ATV Music supported amending the consent decrees to allow copyright owners the ability to limit the scope of the rights they grant to ASCAP and BMI in their musical compositions and to require the PROs to accept those grants; supported an expedited arbitration process for resolving rate disputes; and recommended that the reviews of the decrees occur periodically to take into account new technology changes and conditions. Sony/ATV was not in favor of allowing the PROs to handle rights other than performing rights, as it was their position that these markets already functioned well and that the introduction of such regulated entities into the market for these other rights would be costly and disruptive.[25]

As to the foreign PROs that submitted comments, widespread concern centered on the belief that the current consent decrees were outdated in today's world and that changes were essential if music was to be appropriately licensed and compensated. Partial grants of rights and the bundling of multiple rights are commonplace in the foreign marketplace, and dispute resolution procedures are less cumbersome than the U.S. rate court. PRS for Music in the United Kingdom, which receives over $100 million a year in U.S. performance royalties for its members from ASCAP and BMI, expressed concerns over the present decrees and stated that it would consider licensing the British repertory directly in the United States rather than through intermediaries if it proved more efficient.[26]

DiMA, a trade organization whose members include Apple, Amazon, Microsoft, and YouTube, stated that the decrees have not harmed ASCAP or BMI financially in terms of the music industry generally, and that the PROs must be subject to oversight as their anticompetitive behavior continues to this day. Further, if the DOJ does allow all the PROs to bundle rights as well as permit partial withdrawals, then substantial oversight must be put in place; songwriters should be allowed to keep their rights with their PRO if that's what they wanted, regardless of whether the publisher removed the works.[27]

The RMLC strongly felt that the decrees were necessary to keep the market power of ASCAP and BMI in check.[28] If publishers were allowed to withdraw from the PROs, they could leverage their outsized market share to extract exorbitant license fees from licensees. Both the NAB[29] and Television Music License Committee also shared these views. As to Netflix, its position was that the decrees were in place to constrain the PROs market power.[30] It was against allowing partial publisher withdrawals, but if the DOJ allowed them, then conditions would have to be imposed to mitigate any adverse consequences. Finally, the rate court must stay in place though it does need to be streamlined.

SOUND RECORDINGS

Prior to 1972, no federal copyright protection existed for sound recordings. Congress rectified that situation by extending copyright to any recordings that were fixed on or after February 15, 1972. The owners of the copyright therefore had the exclusive right to reproduce and distribute phonorecords embodying the sound recording, including by means of digital transmission, and to authorize others to do the same. Pre-1972 recordings remained subject to the protection afforded by state laws.

As to the performance right aspect of sound recordings, the right that was enjoyed by musical compositions was nonexistent for records. No performance royalty existed in any medium for sound recordings. That changed in 1995 with the passage of the Digital Performance Right in Sound Recording Act (DPRSRA), which provided for a limited right when sound recordings are publicly performed "by means of a digital audio transmission."[31] The 1998 Digital Millennium Copyright Act (DMCA) included webcasting as a category of performance applicable to this limited performance right.[32] This new right applied specifically to satellite radio (e.g., Sirius XM), Internet radio (e.g., Pandora), and cable television music channels (e.g., Music Choice).[33] Broadcast radio continued to be exempt.

It is important to note that the statutory license applies only to noninteractive services. The right to perform copyrighted sound recordings for on-demand services (interactive services) remains with the copyright owner (normally the label) and is a negotiated agreement between the label and the music user.

These deals have taken many forms, including percentage of gross or net revenue formulas, per performance rates, an equity stake in the business, or a combination of these and other elements.

The rates and terms of the sound recording statutory license are set by the Copyright Royalty Board (CRB), an administrative body created by Congress. SoundExchange, a nonprofit organization, has been designated by the Librarian of Congress and the CRB to be the sole entity to collect, administer, and distribute the royalties from noninteractive webcasting, digital cable, and satellite transmissions and satellite audio services. Congress also gave SoundExchange the right to negotiate agreements separate from those set by the CRB through the Webcaster Settlement Acts of 2008 and 2009.[34] Services therefore can choose whether to be licensed under the CRB rates or the SoundExchange negotiated rates.

There are five major sound recording licensing categories, each of which is subject to a separate rate proceeding. The categories are webcasting, satellite radio, preexisting music services, other cable and satellite music providers, and business establishments. An example of one of these proceedings involved Sirius XM satellite radio, which concluded in 2012 and set rates for a five-year period at 9 percent of gross revenue for 2013 increasing to 11 percent in 2017.[35]

Webcasting IV—the proceeding regarding future webcasting rates—commenced in early 2014 and will conclude at the end of 2015 and will set rates for the period 2016–2020.[36] The most recent five-year CRB per-performance statutory webcasting rates were $0.0019 for 2011, $0.0021 for 2012 and 2013, and $0.0023 for 2014 and 2015.[37]

The Webcaster Settlement Acts of 2008 and 2009 allowed SoundExchange to negotiate alternative royalty rates ("pureplay" rates) with certain webcasters. For nonsubscription services and broadcasters streaming their content on the Internet, the "pureplay" per-performance rate started as $0.00102 for 2011 and increased to $0.0013 in 2014 and $0.0014 in 2015. The rate applicable is the greater of the per-performance rate or 25 percent of U.S. gross revenue. The "pureplay" per-performance rate for subscription services started at $0.0017 in 2011 and increased to $0.0023 and $0.0025, respectively, for 2014 and 2015.[38] No percentage of revenue figures applied to the subscription rate. Under those agreements, webcasters therefore had a choice to be licensed through 2015 either with the CRB rates or the SoundExchange "pureplay" rates.

As to the current *Webcasting IV* CRB proceeding, SoundExchange's initial rate proposal for the 2016–2020 period was a "greater of" formula taking into account a per-performance rate and a percentage of the service's revenue. Specifically, the per-performance rate for commercial webcasters would commence at $0.0025 in 2016 with escalations to $0.0029 in 2020. The percentage of revenue would be 55 percent for all five years. Its proposal was based on the fact that webcasting is a vibrant and growing industry, that it has widespread adoption by consumers, and that direct licensing deals between record companies and on-demand services (interactive streaming) were the most appropriate benchmarks to use. A review of these deals confirmed that the record companies received a minimum share of 50–60 percent of a service's revenue, with allocations based on each record company's share of total streams.

Music services, on the other hand, argued in their direct case that the industry is not profitable even considering payments under the reduced Webcaster Settlement Act agreements. Pandora, Sirius XM (streaming component), and the broadcasters, through NAB among others, came up with proposals ranging from a royalty of $0.0005 per performance for all five years, to $0.0016 pending study of the direct deals, to a $0.000125 rate similar to the Canadian rate. Pandora supported a "greater of" rate of $0.0010 per performance or 25 percent of revenue.

SoundExchange Distributions/Direct Licenses

SoundExchange collected $650 million in 2013 pursuant to the statutory license and distributed $590.4 million to artists and sound recording copyright owners.[39] Collections and distributions for 2014 are projected significantly higher than 2013. Royalty distributions are allocated 50 percent to sound recording copyright owners (many times the label), 45 percent to featured artists, and 2.5 percent each to nonfeatured musicians and nonfeatured vocalists via the Intellectual Property Rights Distribution Fund administered by the American Federation of Musicians and SAG-AFTRA. An additional $6 million was collected from foreign country collection societies that handle the performance right in sound recordings. As to this latter collection, it is limited based on the reciprocal right being administered in each country. As the U.S. sound recording performance right is a very limited one (noninteractive streaming primarily), it substantially reduces the amount of royalties coming into the United States for overseas sound recording performances.

Finally, in the case of rights owners wishing to directly license their works to noninteractive services and not rely on the statutory license or SoundExchange separately negotiated deals, SoundExchange does offer administration services to both labels as well as artists for those works.

Pre-1972 Sound Recordings

As previously mentioned, sound recordings fixed prior to February 15, 1972, are not subject to copyright, and any rights they do have depend solely on whatever rights are afforded to sound recording owners under state law.

In September 2014, in *Flo & Eddie Inc. v. Sirius XM Radio Inc.*, the U.S. District Court for the Central District of California ruled in a motion for summary judgment that copyright ownership of a sound recording under the California statute includes the right to publicly perform the recording, and that Sirius XM's streaming of the 1960s band the Turtles' pre-1972 recordings without authorization and without paying royalties constituted copyright infringement.[40] In November 2014, the U.S. District Court for the Southern District of New York in *Flo & Eddie, Inc. v. Sirius XM Radio, Inc.*, ruled that Sirius XM had committed copyright infringement and engaged in unfair competition by publicly performing sound recordings owned by Flo & Eddie.[41] These cases and their appeals as well as similar pending cases regarding the same or similar issues need to be watched, as they could have a very significant impact on future sound recording license fees and royalties to labels and artists.

WHERE DO WE NOW STAND?

Of the two performance areas under discussion, musical composition rights and sound recording rights, the sound recording side seems much clearer than the composition side. The sound recording performance right, at least for now, is a very limited right (traditional radio, for example, is not included) and has a statutory scheme in place with rates set by either the CRB, by SoundExchange with users, or by direct negotiations between copyright owners and users. Over the past 10 years, this has been, percentage wise, by far the biggest growth area for sound recording copyright owners.

The musical composition performance right, on the other hand, has more questions and unresolved issues in the licensing process than ever before. Not only do you have unresolved rate court cases and issues affecting every aspect of the licensing of music in the "new media" world (not to mention the effect on traditional media licensing) but also the entrance into the field of new types of PRO models (music publishers, business entities, administration services, foreign territory rights management organizations, etc.). This could, depending on your point of view, significantly complicate the existing licensing structure for music users, achieve "willing buyer, willing seller" market rates for the creative community and their representatives, strengthen the arguments for licensing through the traditional PRO model, weaken the current traditional PRO structures, increase license fees and royalties in some areas with reductions in others, initiate an era of PRO selective administration services only, create new writer and music publisher royalty payment formulas, values, compensation plans, guarantee arrangements, royalty advance deals, bonus and "rewards for success" policies, and other financial incentive plans, among other possibilities and results.

In addition, the direct licensing of works by copyright owners, never a major factor in the past, has taken on new significance in not only the online "new media" world of music licensing but also traditional media music licensing practices. Finally, the DOJ review of the ASCAP and BMI consent decrees, in effect since 1941, could have a significant effect on the future of music performance licensing, assuming that any changes encompass more than just minor modifications.

The foreign marketplace, responsible for the collection of over $1.5 billion in annual U.S. writer and publisher performance fees, represents an additional area of concern regarding the stability, continuation, and accuracy of "overseas" royalty payments. The issues in this area are more significant for songwriters and composers than music publishers, as many publishers collect their monies directly from foreign societies as members or via subpublishers. For successful songwriters, film and television composers, and writer estates, foreign royalties—for many, easily in excess of 50 percent of their short-term and long-term royalty income—have always flowed through the societies through reciprocal agreements, and any change in those relationships could have a major impact on the ability to license, track, audit, collect, and receive foreign country songwriter and composer royalties.

The best advice for the future—in all of your deals, negotiations, and contracts—"prepare for every contingency and possibility," as they may very well come true.

Welcome to the "new world of performance licensing."

ENDNOTES

1. 17 U.S.C. § 106.
2. *See* Meredith Corp. v. SESAC, LLC, No. 1:09-cv-09177-PAE (S.D.N.Y.).
3. *See* Todd Brabec & Jeff Brabec, *Online Music Licensing: From PROs, AOL, and MobiTV to SoundExchange, AT&T, and the CRB*, ENT. & SPORTS LAW., Oct. 2011.
4. *See* United States v. ASCAP, 485 F. Supp. 2d 438 (S.D.N.Y. 2007).
5. United States v. ASCAP, 627 F.3d 64 (2d Cir. 2010).
6. ASCAP v. United States, 132 S. Ct. 366 (2011).
7. *In re* Cellco P'ship, 663 F. Supp. 2d 363 (S.D.N.Y. 2009).
8. United States v. ASCAP, 599 F. Supp. 2d 415 (S.D.N.Y. 2009).
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12. Broad. Music, Inc. v. DMX, Inc., 726 F. Supp. 2d 355 (S.D.N.Y. 2010).
13. *In re* THP Capstar Acquisition Corp., 756 F. Supp. 2d 516 (S.D.N.Y. 2010).
14. Broad. Music, Inc. v. DMX Inc., 683 F.3d 32 (2d Cir. 2012).
15. *In re* Pandora Media, Inc., Nos. 12 Civ. 8035, 41 Civ. 1395, 2013 WL 5211927 (S.D.N.Y. Sept. 17, 2013).
16. Broad. Music, Inc. v. Pandora Media, Inc., Nos. 13 Civ. 4037, 64 Civ. 3787, 2013 WL 6697788 (S.D.N.Y. Dec. 19, 2013).
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19. *See* United States v. ASCAP, 627 F.3d 64 (2d Cir. 2010).
20. *Antitrust Consent Decree Review*, U.S. DEP'T OF JUSTICE (June 2014), http://www.justice.gov/atr/cases/ascap-bmi-decree-review.html.
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33. *See* 17 U.S.C. §§ 112, 114.
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35. *In re* Determination of Rates and Terms for Preexisting Subscription Services and Satellite Digital Audio Radio Services, No. 2011-1 (C.R.B. Dec. 14, 2012), *available at* http://www.loc.gov/crb/comments/2012-12/Public_Initial_Determination.pdf.

36. *See In re* Determination of Royalty Rates and Terms for Ephemeral Recording and Digital Performance of Sound Recordings (*Webcasting IV*), No. 14-CRB-0001-WR (C.R.B. 2014).

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41. Memorandum Decision and Order Denying Defendant's Motion for Summary Judgment, *Flo & Eddie*, No. 13 Civ. 5784(CM), 2014 WL 6670201 (S.D.N.Y. Nov. 14, 2014).

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CUTTING EDGE MUSIC BUSINESS CONFERENCE / NOLA

FILM AGREEMENTS AND THE MAKING OF THE BUDDY HOLLY BIOGTRAPHY FILM

PANELISTS

- **Darryl Cohen, Esq.** Cohen, Cooper Estep & Allen, Atlanta, GA (Moderator)
- **Richard "Rick" French,** CEO, French/West/Vaughan, Filmmaker, Board Member, Buddy Holly Foundation
- **Christophe Szapary, Esq,** Provosty & Gankendorff, LLC, New Orleans, LA
- **Stephen J. Easley, Esq.,** Law Office of Stephen J. Easley, Esq.

THEMES:

- The ramification of streaming on the economic structure and development of bio pics.
- The impact of Covid-19 on the production and financing of motion pictures.
- The rise of the documentary film and docu series and its effect on life rights.

PANEL DISCUSSION

1. Introduction: Panelist introduce themselves and provide brief career background.

2. Buddy Holly Bio Pic: Introduction to the life of Buddy Holly and the inspiration behind the Buddy Holly Biography Film.

3. Underlying Rights:
   a. *Securing the Life Rights to Buddy Holly's life story*.
      i. Life Rights Chain of Title:
         . Heirs
         . Option/ Purchase
         . Credit
         . Participation

ii. Bio Pic vs. Documentary: Splitting scripted and non-scripted rights

. Separate and Independent scripted and non-scripted agreements with life right holders

. Structure: option/purchase v. attachment v. material release.

. Profitability of documentary film/series in the age of Covid/Steaming

. One financier vs. two financiers for production of the documentary and bio pic.

. The timing of releasing on documentary and bio pic

. Holdback and Freezing of rights.

b. Securing Rights to Buddy Holly's Music.

i. Buddy Holly's Master Recordings.

ii. Buddy Holly's Publishing

4. Development:

a. The Production Entity Structure:

i. Two-sided LLC for investors and service providers- Theatrical

ii. LLC for equity holders only- Streaming.

iii. Conflict of interest for attorneys who help package production/ conflict waivers

b. Development Funds/The Role of BMG.

c. Writer Agreement/Producer/Director/Actor Agreements

i. Compensation and Participation streaming vs. theatrical

. Fees

. Contingent Compensation

. Bonus

5. Production:

a. Investors, Financiers and Distributors.

i. BMG or other independent Investors- and Sales Agency Agreement

ii. Studio or Negative Pick Up Agreements –Covid and Completion Bond Issue.

iii. Steaming Platforms and its effect on film finance and Distribution.

CUTTING EDGE CE 27th

NEW ORLEANS

August 2019

Ch Ch Ch Changes

by Peter Dekom[1]

J.J. ABRAMS
Director, upcoming "Star Wars: The Rise of Skywalker"
"For a long time, people have been saying the business is changing, but that's undeniable now. It's on."
New York Times, June 20, 2019

For those of us who have lived through decades of changes and challenges in practicing entertainment law, nothing begins to approach the level of structural, social and economic change we face today. So, I thought I'd write down what I believe are the biggest challenges of practicing entertainment law, especial today, focusing primarily on audio-visual content:

I. Globalization is a Bitch!

ELIZABETH BANKS
Actress, director of upcoming *Charlie's Angels*
"It's interesting, because there's a lot more work, but it's a lot harder to make money on anything."
New York Times, June 20, 2019

We are more dependent on international exploitation of our entertainment assets than ever before. Take away international revenues, even beyond the English-speaking world, and just about every segment of the U.S.-based entertainment industry would collapse. But with that incredible new source of revenues comes a litany of problems.

Not only are the production resources in other nations increasingly being deployed for their own local productions (or regional co-productions), but those old "quota" ratios are rearing their ugly heads again. Not to mention that we have real competition: K-Pop and Korean movies, for example, are fan favorites all over Asia these days… and spreading. Lots of this content is more popular than some of the best creative content from the United States.

Locally produced Chinese (PRC) movies are consistently outperforming American fare as well. And for revenue sharing content, the PRC quotas for allowing in international theatrical movies are severely limited: 34 films per year as of this writing with the proviso that at least 14 of those

[1] A graduate of Yale University and the UCLA School of Law, Mr. Dekom has practiced entertainment law for over four decades, being named by both the Century City Bar Assn and the Beverly Hills Bar Assn as entertainment lawyer of the year.

films be in either 3D or IMAX format. Then try exporting your Chinese-generated profits back to the United States! Donald Trump's disfavor with Hollywood has also moved "entertainment content" issues to a very back burner in his trade negotiations. The censorship issues are, well, obvious.

If money from ancillary rights was a driver, perhaps also the fuel that enables coproductions (note the United States has no coproduction treaties), then anything that threatens the deep European pockets that write those checks also threatens indie productions across the board. Cord-cutting and multinational competition are definitely pushing European presale and coproduction values lower. Mega-huge French "Canal Plus has confirmed its plan to trim nearly 20% of its workforce in France where the pay TV group has been facing the continued decline of its subscriber base.

"Canal Plus said in a press release on [June 9, 2019] that it met with the company's social and economical committee to lay out its plan to cut up to 492 jobs through voluntary departures and said it will be holding further discussions on July 15 and 16… In its statement, Canal Plus said it was struggling to cope with the 'revolution"' going on in the TV industry, with the 'global platforms, digital native and international which boast considerable financial muscles and are not under the same fiscal and regulatory constraints than the Canal Plus Group,' said the company." Variety.com, June 9, 2019.

Europe offers us even more problems as well. With the U.K. poised for an even uglier Brexit, Ireland remains as the only English-speaking country in Europe. Might seem like slight change, but all those lovely European Union benefits (like nice TV license fees, access to co-productions, the ability to use any EU resident and quota compliance) we used to get by shooting in heavily tax-subsidy-incented England are slip-sliding away. Yet we hunger for European audiences (the largest still for US product) and increasingly for European subsidies.

The cost of making audio-visual productions – film, television, digital, long format, short format, music, multiple platform, etc. – has so escalated that we have become addicted to so-called "soft money," government production incentives that literally absorb significant production costs. In the states (especially Georgia, New Mexico, Louisiana and New York) and overseas (everywhere!). We're always looking for the next good deal. Problem is, these incentives keep changing, getting challenged, "adjusted and amended," recalculated … country by country. Are their crews sufficient and good? English-speaking? Production facilities? Comparable work ethic? Visas and local taxes? Costs to transport and house talent? Getting stuff in and out of customs? Local laws? Co-production potential (the U.S. has no co-production treaties, by the way). Need a local attorney too. Who's good? Foreign Corrupt Practices Act issues? Bribery Act issues (UK)? Ramifications of moving money across international boundaries? U.S. taxes?

European Union laws, beyond the General Data Protection Regulation (GDPR), are threatening to move Europe into becoming a single digital market (sell digital rights in one market and you

may in the future have sold digital rights to the entire EU). Under the guise of copyright reform, the EU is redefining the notion of a "safe harbor" to internet service providers, making digital platforms responsible for copyright infringement, artist rights and fake news carried on those sites. "The overhaul contains two controversial provisions that will make online platforms liable for illegal uploading of copyright-protected content on their sites, as well as force Google, Facebook and other digital companies to pay publishers for press articles they post online." Variety, April 15, 2019. The new rule was signed into law on April 17, 2019.

Privacy laws, sprouting up all over the world are picking up the log line in the GDPR as well. The California Consumer Privacy Act of 2018 was the seminal U.S. state statute in the space, several other states have followed and are following suit (Washington State appears to be working on the next big bill), and Congress is exploring national requirements. Opt-in requirements, the ability to erase your online footprint (to disappear), the notice for hacked sites and the crushing penalties for violation should put the fear of God into the hearts and minds of all entertainment practitioners whose clients access the web, particularly those who reach across international boundaries. Are you ready for 'dis?

That's what's happening in nations where "free speech" has few limitations. While you cannot sell Nazi memorabilia online in Europe, generally across the West, the counter to the press for privacy regulation and responsibility for disseminating fake news is countered by that "free speech" value (or more, like our First Amendment). Those values are tempered in other parts of the world, even ostensible democracies like India and Singapore.

Murders by Hindus against local Muslims based on fake news gone viral made India particularly sensitive to the impact of too much free speech. Look back at their pre-election planning back in early April of 2019: "As India, the world's largest democracy, gears up for a gigantic general electoral process, global social media companies are putting their own houses in order. The election runs in seven phases from April 11 through May 19, with results known on May 23.

"Approximately 900 million Indians, many of whom are constantly exposed to social media via their phones, are eligible to vote in the elections. Facebook counts approximately 300 million subscribers in India, making the country its largest single market.

"On Monday [April 1, 2019], Facebook removed hundreds of pages associated with the opposition Indian National Congress party and the ruling Bharatiya Janata Party for 'coordinated inauthentic behavior.' With ongoing tensions between India and neighboring Pakistan, the company removed 103 Facebook and Instagram pages with links to the Pakistan military.

"The specter of fake news is all too real in India and, in a bid to curb this, on Tuesday, WhatsApp launched 'Checkpoint Tipline' where users can report suspicious material. The company will confirm whether the shared information is verified or not.

Earlier, on March 20 [2019], the Social Media Platforms and Internet And Mobile Association of India, which includes representatives of Facebook, WhatsApp, Twitter, Google, ShareChat, TikTok and others, presented a voluntary code of ethics to Indian election commissioners. The code consists of several steps to prevent abuse, and to maintain a transparent flow of information to the Election Commission.

"The Election Commission has an exhaustive model conduct code that all political parties are expected to adhere to, beginning with 'No party or candidate shall indulge in any activity which may aggravate existing differences or create mutual hatred or causing tension between castes and communities, religious or linguistic.'" Variety.com, April 2, 2019.

Another regional democracy, aghast at both its own issues and the ugly example of "fake news" roiling through the United States, decided to crush that movement with swift legislation, virtually certain to become law. "The Singapore government has introduced legislation to combat the spread of misinformation online. The proposed law puts responsibility on media and social media platforms, requires online corrections, and threatens to take away profits of repeat offenders.

"The Protection from Online Falsehoods and Manipulation Bill was introduced by the Ministry of Law, and put to parliament on Monday. Given the government's solid majority it could become law in a matter of weeks.

"The government says that the bill targets falsehoods, not opinions and criticisms, satire or parody. Corrections will be the primary response to a harmful online falsehood that is actively spreading, and that corrections will usually require the facts to be put up alongside the falsehood, so that the facts can travel together with the falsehood." Variety, April 2, 2019.

But the implications for American companies crossing international boundaries is not just the massive uptick in complex, detailed and exceptionally expensive (both as to compliance and fines) impact of new laws and regulations. The financial realities overseas are equally in flux. To make bad matters "much badder" and adding to the complication, the entertainment-related financial picture from overseas is also undergoing other rapid changes. The foreign territorial sales marketplace (discussed below – in *Rescinding the Indies*), for example, was already bad and is just getting worse.

As hungry as Hollywood may be for subsidy money, it is positively ravenous for international investment capital. On August 18, 2017, when Chinese President Xi Jinping gave the order, China put the kibosh on exporting PRC investment capital into overseas real estate and entertainment ventures. The squeal of brakes was heard across the U.S. entertainment industry, from "independents" hall all the way up to the loss of a billion dollar off-balance-sheet investment fund for Paramount Pictures.

Already slowing before the announcement, PRC money that was not already outside of China just plain stopped. Lots of schemes and dreams exist to get that tap turned on again. Nuffin'! Trade war didn't help either. China announced stricter censorship rules, and many U.S. film and television conglomerates fear the possibility of a total closing of the Chinese marketplace to U.S. product. China's done it before – with South Korea – so it is certainly not out of the question.

"Chinese film officials have told some local buyers to steer clear of U.S. movies. One Chinese distributor says he was advised by various platforms not to submit U.S. titles for consideration, while another has heard through unofficial channels that private companies can no longer import U.S. content. American actors working in the Middle Kingdom say their careers have nosedived without explanation.

"Industry insiders stress that there is nothing in writing – no officially published decree – putting a freeze on U.S. content. The Chinese government tends to exercise such controls internally and unofficially, which allows it to publicly deny the existence of any restrictions and to make exceptions when it suits them. Three years ago, when China blocked South Korean films, pop bands and other cultural exports out of anger over Seoul's decision to deploy U.S.-made missiles, it took six months before Beijing publicly acknowledged the policy." Variety.com, June 5, 2019. Even if a trade agreement is consummated, the tensions between the two powers will continue. South Korea is small and local; the U.S. is the enemy.

How about Middle Eastern money? The March 8, 2019 The Washington Post: "A bid by a Hollywood power player to return a $400 million investment to the Saudi Arabian government after an outcry over the murder of Saudi journalist Jamal Khashoggi has been fulfilled, a person with knowledge of the talks told The Washington Post. The person spoke on the condition of anonymity because of the matter's sensitivity.

"Endeavor, the Hollywood talent agency and content company, had accepted the money last spring from Saudi Arabia's Public Investment Fund after, Ari Emanuel, the company's co-chief executive, became enamored with the idea that Saudi Crown Prince Mohammed bin Salman was on the path to reform. The capital was quickly spent as Endeavor looked to pay down debt on a host of corporate acquisitions, which in recent years have included mixed martial arts and professional bull riding leagues." Ouch! Endeavor's alternative – going public – is discussed later.

II. Rescinding the Indies.

JORDAN HOROWITZ
Producer, *La La Land, Fast Color*
"I don't feel particularly optimistic about the traditional theatrical experience, especially for independent films."
NY Times, June 20, 2019

With about 4,000 new English-speaking feature-length independent motion pictures still being produced annually, you'd guess that that world is robust and lucrative. Guess again. Under 1% of

that batch ever find anything close to a genuine release anyway, and most of that product finds its way onto the small screen, digital or otherwise. Well-structured documentaries are doing better than in recent years, although competition for distribution is still horribly competitive, but dramatic fare is struggling. With a few exceptions – *my category of five,* where sharing the experience with an audience has value or where an older audience still make the trek: truly spell-binding horror films, fall-on-the-floor hard comedies, faith-based/"patriotic" specialty releases, films that made a splash overseas and films targeting kids (especially animated) – the U.S. theatrical market (release in movie theaters) is all-but-closed to indies, particularly those with modest to lower budgets. Hot preexisting IP rules, and most writers don't have the money to option those titles.

As Hollywood studios up their production budgets, with concomitant increases in marketing spends, the ability of "festival favorite" independent features to penetrate the U.S. theatrical marketplace has all but vaporized, as was the case for this May 24, 2019 wide release: "Despite film festival raves and endorsements from celebrities like Ryan Reynolds, Taylor Swift and Mindy Kaling, Annapurna's 'Booksmart' wasn't able to earn high marks during its opening weekend. Olivia Wilde's coming-of-age comedy sputtered with $6.9 million, a disappointing start for a movie that debuted in over 2,500 theaters across North America.

"The raunchy R-rated movie is a stark reminder that even glowing word of mouth and strong reviews aren't always enough when punching up against big-budget blockbusters. 'Booksmart' is one of a handful of indie hopefuls trying to cut through and find an audience amid a crowded summer slate. Will its underwhelming ticket sales signal trouble for other film festival favorites coming down the pike?" Variety.com, May 29, 2019. Everything about making and releasing an independent theatrical film has gotten exceptionally challenging.

While soft money has absorbed some of the financial pain of film and television production, the fall in demand for indies internationally is not good news for lawyers whose bread and butter is based on these films. This is also particularly challenging to filmmakers who have typically relied heavily on international territorial presales to provide production capital (usually discounted by banks relying on completion bonds). International buyers increasingly add the demand for a wide theatrical release in the United States as a precondition to payment, but U.S. distributors have learned that smaller films cannot compete against the mega-productions from Hollywood majors. The scoundrel: marketing and distribution costs for a domestic theatrical opening have skyrocketed. U.S. theatrical deals for indie films have become as rare as hens' teeth. Some films, however, are either so inexpensive or have such an obvious international cachet that they can avoid this U.S. release mandate.

Where an indie still needs that U.S. theatrical release (remember those international buyer conditions), it is often required to put up all releasing costs to open their film – $15 million and

up for a release on at least 1500 screens – without getting a dime in the way of an advance against their production costs. Many of the distributors who are open to indies also require an advance of six figures against the ultimate distribution fee and often require that all the ancillary exploitation flow through their deal as well.

What you say, at least in this digital world we don't have to strike old-world prints; think of the savings! Sorry, it could actually cost more! When a distributor books a screen for a theatrical movie, where the projector is digital (they almost all are these days), the distributor must pay either the theater owner or the financier of the digital projector a set fee, called a virtual print fee. It may depend on the nature of the equipment (3D/IMAX vs regular formats), the size of the theater and/or the number of weeks of the run. It ain't cheap! It used to be to cover the amortization cost to buy those cool projectors, until recouped, but you just know those fees are not only never going away, they are like to increase.

So now the risk to the indie is not just the cost of making the movie but the significant cost to release that film theatrically in the U.S. marketplace. Majors and their specialty labels seldom pick up indie films anymore, but if a film has already opened well overseas, particularly in English-speaking markets, they are more open to picking up that proven content.

As the theatrical distribution pickups for U.S. independent films dwindle, likewise those who have traditionally provided so-called "P&A funding" (literally "prints and advertising," but today a general reference to theatrical releasing costs, usually within the United States) have left the marketplace or made the cost of such funding so high as to be prohibitive. This has sent filmmakers scrambling in desperation, and many have simply relinquished their hopes for a U.S. theatrical release.

Even assuming you can get over the above U.S. release requirement, in the past five years, the "average" presales from the foreign market for films that are not heavily skewed to a U.S. audience (e.g., a baseball or American football themed movie) have fallen from 60% of an average budget (capped on really big films) to 40%... and falling. The strong dollar along with international instability (Brexit, too much national debt, too much competition, etc.), coupled with bigger companies (like Lionsgate and STX) absorbing capacity, have tightened purses everywhere.

There's still plenty of activity in pick-ups and production supported by domestic streaming services, but audience consumption of feature films (original and aftermarket) from a successful streaming service generally caps out at about 30% of total content watched. The continuity of *series* (characters and storylines), the added plus of binge viewing, tends to drive most of that other 70%. Live sports are an area that viewers enjoy as well and is increasing finding its way into the streaming universe. And exactly what is a "movie" anyway?

As you can tell from the battle between traditional "big-screen" filmmakers and streamer-Netflix – evidenced in the Oscar squabble over *Roma* – the opportunities for indies has so narrowed that there is a push to allow a film with a token theatrical release that is intended primarily for the small screen to be accorded the same respect and treatment as a film specifically produced for a mainstream theatrical release. The writing is on the wall, and if "quality" productions are to have a shot against escapist Hollywood blockbusters, this seems to be inevitable.

But there's one more ugly reality that has frightened indie filmmakers with "quality" on their minds: theatrical releases from digital streamers are tanking on par with all other indies… even festival darlings and award-winners. "Five months after strutting out of the Sundance Film Festival with a bag full of splashy acquisitions, Amazon Studios has been thrown off balance by a box office losing streak and the departure of one of its top executives [marketing and distribution chief, Bob Berney].

"One of its highest profile Sundance buys, Mindy Kaling's 'Late Night,' has proven to be a painful failure. It has earned only $11.3 million in North America, where it's been playing on over 2,000 screens for the past two weeks. That's a poor result given that Amazon plunked down a hefty $13 million for domestic rights to the picture. What's worse, the marketing budget on 'Late Night' topped out at $33 million. Rival studios project that Amazon could lose roughly $40 million on the comedy's theatrical run." Variety.com, June 27, 2019.

U.S. theater owners, awash in available screens, see the problem. Our largest exhibitor, AMC Entertainment with 8,380 screens, is resurrecting a program it has tried in the past: a special structure aimed at supporting smaller quality films in search of a theatrical release. "The program, dubbed AMC Artisan Films, will seek to boost certain movies that might have trouble gaining traction as moviegoers increasingly choose well-known brands, such as Marvel Studios and Pixar, over midbudget dramas, comedies and quirky independent fare. The dominance of movies such as 'Avengers: Endgame' has made it tough for critically acclaimed pictures such as 'Booksmart' and 'Late Night' to get oxygen at the local multiplex, according to box office analysts.

"'[W]e aim to expose more moviegoers to specialized films and increase their theatrical success," Elizabeth Frank, AMC's head of worldwide programming and chief content officer, said in a statement… The company did not immediately provide details on how many of AMC's locations would be participating in the new program…

"According to AMC's announcement, a movie that gets the AMC Artisan Films seal is 'an artist-driven, thought-provoking movie that advances the art of filmmaking.'… The company will promote such pictures in part by keeping them in theaters longer and by seeking to give them earlier runs in limited release, Frank said." Los Angeles Times, June 27, 2019. These programs have not worked well in the past, but perhaps times have changed.

Smaller studios (entities with both production and distribution arms), holding hope for many indie filmmakers, have not fared well in recent years either. In early July of this year, The Wrap suggested that STX Entertainment was on the block, looking for a buyer, although company executives denied the story. "The independent studio STX Entertainment is looking to merge, raise capital or find a buyer following a string of box office disappointments and the scuttling of a planned [Hong Kong] IPO last fall, TheWrap has learned…

"This year, the studio has suffered one disappointment after another at the box office, with one notable exception: In January, STX released the $108 million-grossing domestic hit 'The Upside,' a release by The Weinstein Company [defunct for other reasons] successor Lantern Entertainment for which STX collected a distribution fee and some back-end profit… STX's most recent release, 'Poms,' grossed $13.6 million at the box office in May in a distribution deal with producer eOne. STX took on the cost of prints and marketing. Another spring release, 'Best of Enemies' starring Taraji P. Henson and Sam Rockwell, took in just $10.2 million on a $10 million production budget.

"But the most painful misstep came with a May [2019] release of star-studded animated feature 'UglyDolls,' which cost roughly $95 million between production and marketing spend and brand tie-ins and brought in only $26.4 million worldwide. The studio had hoped for a hit that would become a franchise based on the popular children's toys… The studio's financial difficulties are one in the latest in a string of indie studios to struggle or fade from view in the last few years — including Open Road, The Weinstein Company, Relativity and Annapurna — as Hollywood has become dominated by superhero franchises and a wave of major studio consolidation." TheWrap.com, July 7, 2019. Yet, every part of the U.S. theatrical motion picture is challenged.

Even the greenlighting of those Hollywood blockbusters has changed. Making a move based on the presence of a movie star has been replaced by hot titles and subject matter recognized by the general public as well as the presence of a very, very few hot directors. The era of "first dollar gross" actors has pretty much been relegated to the history books. With the new mindset of younger audiences, used to hyper-accelerating change, their "what and who is cool next" perspective has decimated the movie star system. "Star" actors who survive tend to eschew the leading man/women cachet of old in favor of becoming character actors creating a *new-next* persona in each film they pursue.

Without independent films, however, there is simply not enough product to fill the over 40,000 screens in the United States. Experts suggest that we are 15,000 screens too many. Given the high production costs, the number of super-high-production value films is of necessity limited, so theater owners have been having a terrible time, saved only by one record-breaking blockbuster – *Avengers: Endgame.* "AMC Entertainment as the world's biggest exhibitor, felt the burn from a series of flop films and underperforming blockbuster hopefuls during its most recent [first]

quarter. The company's revenues fell 13.2% to $1.2 billion, while the company suffered an adjusted loss of $1.21 per share. It also recorded a net loss of $130.2 million…

"The movie business was in a funk for the first three months of 2019… AMC wasn't the only chain to see its fortunes fade. U.S. movie admissions slid 14.9% in the first quarter to 265.6 million and box office receipts plunged 16.3% to $2.39 billion. AMC did manage to outperform the industry — its domestic attendance per screen only declined 10.1% in the first quarter of 2019." Variety.com, May 9, 2019. Strange. The exhibition business needs films, there are lots of screens available virtually any time of the year, but with all the entertainment alternatives, indie films still underperform to the point of near extinction. But wannabe filmmakers are out there, shaking the trees for production financing.

Even some of those expensive, effects-laden Hollywood franchises seem to be unable to impress a jaded audience with too many entertainment alternatives. The less-then-expected performance this May of this year of Warner Bros' *Godzilla: King of the Monsters* (opening at disappointing $49 million domestically – almost half of 2014's *Godzilla* [$93 million] and behind even 2017's *Kong: Skull Island* [$61 million]) followed immediately, in June, with of Fox/Disney's *X-Men: Dark Phoenix* (the worst opening for an X-Men franchise), Sony's *Men in Black: International* (opening at slightly above half the U.S. box office of prior MIB films) and Universal/Illumination's *Secret Life of Pets 2* (generating 15% less than the original) remind us that success is anything but consistently automatic even for those mega-budgets studio films.

Are consumers experiencing "franchise fatigue," as some pundits suggest? Then along comes a blockbuster opening, a $185 million Fourth of July U.S./Canadian box office – *Spider-Man: Far from Home* – suggesting that there might be more to these audience shifts than a simple "franchise fatigue" explanation. Perhaps, because It was uniformly viewed by critics and audiences alike as a high-quality film and was a necessary part of the continuing saga of the Marvel Universe. Audiences are still willing to go… "if"… and that's the question. If it's hard for major studios, it's ever so much harder for indies, but wannabe filmmakers are out there, shaking the trees for production financing.

And that leads to another dreaded plague in indie-land. Too many lawyers – who are in the "everybody does it" school – also seem to forget that raising passive equity money to finance film production and/or distribution is usually subject to federal securities and state Blue Sky laws and regulations. There is no entertainment industry exception. And filmmakers continue to have a "my film is an obvious success" mentality that has them telling investors all kinds of "facts" that fly in the face of contemporary statistical realities. Will lawyers involved in such financing efforts find themselves as the guarantors of success to the relevant investors? Bankruptcy may not be available to those who are accused of skirting these statutes and regulations. I'm skipping over that "felony" thang, because enforcement at that level is generally relegated to extreme abusers.

But raising passive equity by hyping a nascent film project in an obviously down market for indies has never been this legally risky.

So, what happens today to indie filmmakers here in the United States. For very low budget productions, the ability to show content via one or more online services at least gets a filmmaker a shot at building credibility. But the online world seems to have genuine mass-audience slots for a very few filmmakers – well-established superstar creators and those who have weathered the film festival circuit and come out with accolades. Maybe not even those creatives. What really generates values in the new streaming world: *series*. A word that is the new focus of just about everyone in Hollywood these days.

"Reality" and semi-scripted series – docuseries, competitions, talk shows, voyeuristic celebrity showcases, variety programming, eSports, etc. – have lost some of their cachet from too many years of oversupply, relegating the most of programming that does get produced to the bigger program suppliers and well-established creator/executive producers. Budgets get bigger as competition increases, and newbies are often forced into tiny participations for their original ideas as the big boyz and girlz eat most of the pie. With luck and time, some of these newbies rise into the system.

The hot commodity: scripted series. There were an estimated 487 scripted series (cable, satellite, terrestrial, digitally-transmitted) in the U.S. market last year; a projected 520 for calendar 2019. This is way, way above the 140 series that the U.S. audience consumed thirty years ago, and since the population has not grown proportionately, except for the biggest such productions, the average revenue per series today has plunged proportionately. The crowded aftermarket also has contracted the value of that "long tail" everyone continues to discuss. Traditional 22-26-episode order patterns have dropped to 13 or fewer for an entire cycle, a challenge to talent pay levels. Fewer and lower paychecks for most…

That said, some of the numbers paid to produce scripted series seem a whole more like feature numbers. Let's hear it for the bell curve and the fact that premium product in the sweet spot has never been hotter. We were all shocked with the initial season (2013) of the Netflix hit, *House of Cards,* commanded a whopping $3.9 million per episode produced. A massive premium above the cost of production replaced the potential for upside. Netflix has since dropped their upside structure – now mostly fixed fee premium bonuses based on series that go beyond the first cycle – and there is no percentage upside accorded on any of their productions.

But that dramatic $3.9 million soon became dwarfed when extremely high-production value series, like HBO's *Game of Thrones,* cost $9-$10 million an episode to make in the first year, with rumors of individual episodes costing as much as $20 million in subsequent cycles. Whew! For A-titles at the tip of the bell curve, the sky seems to be the limit. Hot TV creators were offered tens

of millions of dollars to take their talents into the digital streaming world, leaving behind their old-world telecasters.

Indie filmmakers take note: if you morph your passion for making two-hour movies for theatrical release, a business that is all but gone, into a storyline that can continue, perhaps for years, you just might soar. Learning to write bibles (summaries of characters, scene, continuous story vectors with outlines of five or six episodic storylines) and the pilot teleplay are the "next-gen" skills that writers need to embrace. Hint!

Writers writing originals for theatrical films, not based on preexisting hot intellectual property that they own or control, need to know that their two-hour screenplays are little more than writing samples. Why? Without preexisting name recognition, especially in the United States, the extra marketing cost to create that awareness, always a risk anyway, is often in the tens of millions of dollars over the tens of millions already needed to open a film in the U.S. that already has that awareness. Majors can spend $30 to $80 million (or more) toward a single U.S. theatrical release. Television/digital programmers don't have those marketing costs, so they are a more open to such content (they just need some "names" – actors and/or a hot director to vindicate their choice). There is also another path.

Turn it into book, place that book into the market and pray (prey?). Example: picture *Fifty Shades of Grey* as an original script seeking a studio production deal. No shot! Zip! Nada! Rejection city! Self-published as the very successful first book of a trilogy, studios were tripping all over themselves for the film rights. To date, that trilogy has sold over 125 million books worldwide. English author, E. L. (Erika) James, a former studio manager's assistant at the National Film and Television School (Beaconsfield), sold those film rights, with real upside, for a fortune.

As we shall see in my section on Consolidation below, increasingly, the definition of percentage upside for television production is vaporizing, particularly as streaming services do not want to report viewership or be forced to track exploitation revenues. In feature distribution, "net profits" have become an illusory waste of paper. Replaced by more meaningful definitions of "breakeven" often embellished with box office bonuses as advances against percentage upside, it still remains that except for that short list – *my category of five* types of films listed above – the probability of significant upside from a theatrical film appears to be relegated almost exclusively to the majors and their specialty labels.

Bottom line: the places where talent can expect to make huge salaries and upside may still exist, but those opportunities are rare and far between. For most of us in this industry, we are going to work twice as hard to make half as much on the rest. The individual units of production have multiplied, but the audience has not. So, while aggregate earnings across the entire spectrum may have gone up, it is spread across a vastly greater pool of content. There are still big winners,

but under the law of averages most of us will make content for less, a factor that only will be multiplied by my next section.

IV. Consolidation.

JASON BLUM
Producer, *Get Out, Whiplash*
"I've never felt the nervous energy in Hollywood that I've felt over the last 12 months, and it increases every day. There's an uncertainty about the future, because the change is happening in an incredibly dramatic way… I make a show for Apple. They sell a million more phones — how are you ever going to connect those two things? With Amazon and Apple, they don't ever have to be just in a profitable business on movies and TV shows. That's crazy! And it makes people go nuts, because people have worked so hard to put a business model around content, and now they're competing with people who don't need to make that profit." NY Times, June 20, 2019

The future seems to belong to those who control the most content. Netcasters like Netflix, Amazon and Hulu have staggering values, easily competing with old-world content monoliths. With 5G mobile access just around the corner, the ability to view elegant, rich media content, delivered with almost no latency at download speeds that *start* at 10 times 4G speeds, being able to provide massive of "whatever I want, when and wherever I want it" has become a corporate goal for major media players around the world. Younger eyes – Y and Z generation – have no issues with a small, smart phone screen… older viewers, it's a push! Tablet-size?

But is there a limit? Consumers are being charged left and right for online/mobile subscription fees while some streamers have managed to bury those fees with bundled packages (internet carriers/mobile providers, Web-retailer/streamer Amazon, etc.). Cable is/was expensive, but is the aggregation of cord-cutting alternatives turning out to be even pricier? Add an expected recession, and will the cord cutters start paring their selections to just a few "vital" services? Those with the most "best" content? Will AVOD (advertiser-supported video on demand streaming) grow? Or will advertiser skepticism and more reflective metrics create further credibility, and hence revenue, challenges there too?

We all sense that the numbers on the wall for traditional pay television are not particularly encouraging; many such services have added digital subscription services (OTT, over-the-top) as insurance policies. "Subscriptions to traditional pay TV remained flat at 65 percent, says [accounting/consulting giant] Deloitte [in the survey noted below], which changed the way it asked about pay TV, so the 2017 data is not directly comparable to 2018's… Many households (43 percent) have both pay TV and a streaming subscription. More than half (52 percent) of Generation X consumers (ages 36-52) do.

Let's start with the big picture: "Last year, half of Americans aged 22 to 45 watched zero hours of cable TV. And almost 35 million households have quit cable in the past decade… All these

people are moving to streaming services like Netflix (NFLX). Today, more than half of American households subscribe to a streaming service… The media calls this 'cord cutting.'

"This trend is far more disruptive than most people understand. The downfall of cable is releasing billions in stock market wealth… Combined, America's five biggest cable companies are worth over $750 billion. And most investors assume Netflix will claim the bulk of profits that cable leaves behind… So far, they've been right. Have you seen Netflix's stock price? Holy cow. It has rocketed 8,300% since 2009, leaving even Amazon in the dust…

"But don't let its past success fool you… Because Netflix is not the future of TV. Let me say that one more time… *Netflix is not the future of TV*… But for now, let's talk about Netflix's biggest problem…Netflix changed *how* we watch TV, but it didn't really change *what* we watch… Netflix has achieved its incredible growth by taking *distribution* away from cable companies. Instead of watching *The Office* on cable, people now watch *The Office* on Netflix.

"This edge isn't sustainable… In a world where you can watch practically anything whenever you want, dominance in distribution is very fragile… Because the internet has opened up a whole world of choice, featuring great *exclusive* content is now far more important than anything else…

"Netflix management knows content is king. The company spent $12 billion developing original shows last year. It released 88% more original programming in 2018 than it did the previous year… And spending on original shows and movies is expected to hit $15 billion this year… It now invests more in content than any other American TV network… To fund its new shows, Netflix is borrowing huge sums of debt. It currently owes creditors $10.4 billion, which is 59% more than it owed this time last year." Stephen McBride writing for Forbes.com, May 21, 2019.

You mean make or break content like HBO's *Game of Thrones*? Or like that massive accumulation of content that Disney controls that will soon be Netflix worst nightmare? We know. Traditional television is fading fast. Content consumption patterns are changing almost as fast as the weather. Through all of this, Netflix continues to borrow heavily, debt predicated on continued growth. But what happens when a market gets saturated – not very many households left to sell – or new competition puts pressure on pricing and choice? See some serious issues down the road for Netflix? Exactly how fast is all this going to happen anyway? Faster than most think.

"Traditional pay-TV subscriptions do continue to trend downward. Last year, the major pay-TV providers lost about 2.9 million subscribers, after accounting for about 640,000 new subscribers to streamed live TV services such as Sling TV and DirecTV Now, according to Leichtman Research Group. Overall 89.1 million subscribe to pay TV, down from 92 million in 2017, the research firm says." USA Today, March 19, 2019. But it's not just the major pay services that are suffering; it's a macro-trend. And entertainment conglomerates are more than acutely aware of these changes, as I will illustrate in greater detail later.

As we have seen, most recent reports illustrate how "cord-cutting" is just accelerating across the board, and clever repackaging into fewer available networks ("skinny bundles") isn't stemming the hemorrhaging. "The pace of cord cutting is continuing to accelerate this year, according to a new Convergence Research Group report, with 4.56 million TV households opting to ditch pay TV. By the end of the year, 34% of U.S. households won't have a traditional TV subscription, according to the research company's latest 'Battle for the American Couch Potato' report.

"In the report, Convergence estimated that the pay TV industry will see a 5% decline in pay TV subscribers in 2019. That's up from 4% in 2018, when an estimated 4.01 million U.S. subscribers ditched their TV service. Based on the top 66 online video services, the number of streaming subscribers will actually surpass the number of traditional pay TV subscribers this year (households can subscriber to both).

"Attempts to convert cord cutters to skinny bundle subscribers won't pay off for the industry, Convergence predicted. 'With ARPU [average revenue per user] half the traditional TV average, lackluster margins, programming gaps and technical issues, live multichannel OTT provides little counter to category killers Netflix & Amazon that sell at lower price points and essentially without advertising,' the report outlined. 'We believe a number of OTT plays, including large and niche, will fail due to insufficient subscriber traction, cost, and competition.'

"Altogether, online video services are poised to bring in $22 billion in 2019, up from $16.3 billion in 2018, according to the report. Last year, that revenue already grew by 37%. However, even with this growth, traditional pay TV is still expected to bring in more than 3 times as much money per household, and more than 4 times as much across the entire industry, as much as over-the-top video." Variety.com, April 22, 2019

Desperation is driving some providers to attempt to stem their losses by increasing the prices of even their cheapest skinny bundles, which in turn drives away potential subscribers. "The price for the cheapest DirecTV Now bundle went from $35 to $40 last summer, and the telco phased out virtually all of its promotional pricing, which allowed some wireless subscribers to stream DirecTV Now for as little as $10 per month.

"The latter already contributed to significant defections over the holiday quarter. Over the past two quarters, AT&T lost a total of 350,000 DirecTV Now subscribers. It's likely that the service will see additional cancellations from price-sensitive customers in the coming months: AT&T further increased the price of the cheapest DirecTV Now bundle to $50 per month in April…

"[Even] new entrants [like Hulu and YouTube TV] may not be immune to defections as the prices for these so-called skinny bundles are getting fatter across the board. Sports-focused fuboTV announced a $10 price hike in March, and Hulu and YouTube TV both raised their prices by $5 over the past couple of months.

"These massive pay TV defections are increasingly impacting the media industry at large. Discovery reported a 4% decline in subscribers to its cable networks for Q1, despite the addition to online TV bundles… [Research firm, BTIG, LLC's analyst Richard] Greenfield expects that cord cutting will also 'negatively impact broadcast and cable network programmer retrans/affiliate revenues' in the current quarter. And he doesn't expect online TV bundles to make up for those losses, despite the fact that programmers get paid more per online subscriber since 'churn is dramatically higher' for online bundles." Variety.com, May 3, 2019. The ship is sinking, and moving the leaks around isn't going to reverse the obvious.

The trends are even more pronounced, particularly as you look at millennials and Gen-Z: "For example, 70% of Gen Z households had a streaming subscription, closely followed by millennials at 68% and Gen X at 64%. About 70% of Gen Z and millennials stream movies compared with 60% of Gen X viewers on a weekly basis. Some 96% 'MilleXZials' multitask while watching TV." Variety.com, March 20, 2019.

When you mix in the general population, the streaming numbers are less pronounced. "Parks Associates' OTT video research finds household spending on subscription OTT video services has held steady for three years, averaging just under $8 per month since 2016. Given the growing adoption of OTT video services over the past three years, these figures suggest that adoption of multiple services or expensive services by some consumers is offset by a larger base of consumers who either subscribe to one or two relatively inexpensive services, including 30 percent of consumers who do not spend any money on OTT video services." MENFN.com, March 20, 2019. For those households with streaming services, they average a much larger $38 per month, which is growing fast.

Thus, it is clear that television as a medium is rapidly migrating into "all digital," mostly as a subscription-fee-supported format (streaming video on demand, SVOD) with some AVOD and hybrid subscription/advertising platforms in the mix. AVOD is sneaking up on the industry with some surprising numbers. Streaming service Hulu is an A/SVOD hybrid, but "the majority of Hulu subscribers are on the $5.99-per-month ad-supported plan, which is half the price of the $11.99 no-commercials version." Variety.com, May 29, 2019. Is this a reflection of increasing consumer price-sensitivity?

Deloitte examined these Web-delivered-content trends in its latest and 12th annual Digital Media Trends survey released on March 19, 2019, which polled 2,003 American digital consumers from December of last year through February of 2019. 69 percent of those surveyed subscribed to at least one SVOD service (up from 55 percent last year), with the average such consumer subscribing to three.

"Even as more consumers subscribe to video delivered over the internet, nearly half (47 percent) of those surveyed say they are experiencing subscription fatigue… There's now more than 300

streaming services to choose from – up from 200-plus a year ago – and consumers may be feeling overwhelmed, says Kevin Westcott, Deloitte's vice chairman for U.S. telecom, media and entertainment.

"'Well over half (of consumers) say they are frustrated when shows they like disappear or are no longer on a streaming service and that they have to have multiple subscriptions to get what they want,' he said. 'So there is a little bit of subscription fatigue.'

"Those consumer sentiments could concern a marketplace that's bracing for the arrival of two major players later this year – a Disney+ subscription service with Disney, Pixar, Lucasfilm and Marvel movies and original TV series, and an AT&T offering with HBO [to be available online solely through Warner's nascent streaming service] and other Time Warner content – and an NBCUniversal subscription service in early 2020.

"Also growing: subscriptions to streaming music services such as Spotify and Apple Music (41 percent, up from 26 percent a year ago), and video game services including Xbox Live and PlayStation Plus (30 percent vs. 26 percent last year).

"These consumer behaviors could lead streaming providers to develop 'the next generation of the home entertainment platform,' Westcott said. Such services would have coveted original content, but also 'a broad swath of entertainment options inclusive of music and games,' he said. 'It may not be their own content, but they have to have that available to try to keep me under their umbrella.'" USA Today.

Streaming is big business and getting bigger, $2.1 billion a month here in the United States. These numbers are great motivators. Fatigue or not, there is a rush among entertainment conglomerates, with the cash and credit to engage in the race, to aggregate as much content under one roof as possible. They believe that this is the way to ensure that as consumers ultimately pick and choose which services to keep and which to cut, these massive content providers will be on that "must subscribe" list.

But then why is CBS, which has its eyes on its former owner Viacom, offering Lionsgate $5 billion for that mini-major's Starz pay television channels? Until that offer, Lionsgate's stock had plunged 40% in a single year, analysts saying it failed to replace aging motion picture and television franchises. Without Starz, what is Lionsgate anyway? It is an offer that's simply too good to ignore, but what exactly would Lionsgate do that substantial sum? If they couldn't manage to create value for the rest of the company, what would their business plan be going forward without their greatest asset?

For CBS? It's content, library fare and original series. And content, even from an old-world pay service, can easily migrate to a full-digital only stream. Lionsgate countered at $5.5 billion, and the deal slid from view. Permanently? Who knows? CBS then turned its attention to acquiring its

former parent, Viacom, which owns Paramount, Nickelodeon, the MTV Networks to name just a few of its assets. CBS is hungry. It's main network (broadcast and its streaming component) plus Showtime (pay television) just aren't enough to compete with the rising streaming behemoths. So…. Time will tell who the winner and losers are, but consumers are getting new ways to receive content.

There are future trends suggesting that consumer demand for content is likely to escalate as 5G mobile services come online and as Uber, Lyft and driverless cars give passengers even more time to consume content. The volume of such content offers opportunity, but that same volume suggests that the revenue margins will only get thinner. Some are predicting that the chopping up of a consumer day, clearly referring to changing commuting patterns, will give rise to greater demand for short-form audio-visual content, mostly intended for small-screen smart phones. Certainly, Jeffrey Katzenberg's and Meg Whitman's billion-dollar Quibi is being built on that assumption. One way or another, the world of content control seems increasingly divided between buyer/aggregators and exit strategy sellers. Existential.

That little mobile-viewing trend just might not be so little, and 5G is going accelerate the transition. "In the United States, adults will spend an average of 3 hours and 43 minutes each day on their smartphones, feature phones and tablets this year, eight more minutes than they'll spend watching TV, according to a forecast released [June 5, 2019] by research firm EMarketer.

"The change has been years in the making, as smartphones have become nearly ubiquitous and the ways people use their devices have shifted. Phones now let you do more than steal quick glances at social media, and streaming shows and movies on the smaller, portable screens has become commonplace… 'There is far more content today than there was even a couple of years ago,' said Monica Peart, a senior forecasting director at EMarketer, referring to the growth of streaming platforms such as Netflix and Hulu. 'All of this is driving the need or desire to be on the smartphone.'

"The gap between the amount of time spent on mobile devices and TV has narrowed dramatically over time. Last year, American adults spent nine minutes more watching TV than looking at their phones and tablets, EMarketer said. But TV watching used to be more dominant; just five years ago, adults spent two hours more watching TV than using mobile devices, the firm said.

"The forecast follows other reports, including one by Nielsen, that indicate audiences are spending less time with traditional television. In the third quarter of 2018, Nielsen said, American adults on average spent 4 hours and 14 minutes each day on live or time-shifted TV, 11 minutes less than a year earlier. Time spent on apps and the web on smartphones and tablets in the third quarter was 3 hours and 14 minutes, 17 minutes more than a year earlier, Nielsen said." Los Angeles Times, June 6, 2019. Which content will benefit most from the migration to this small

screen? Too much content? Confusing to consumers? Overwhelming? A big shakeout? Time will tell.

While this article has focused mostly on audio-visual content, there are lessons to be learned from our neighbors in the music business. Just as digital delivery is altering the film and television industry in a huge way, changing the landscape on access to audiences and slowly replacing older models, the Napsterization of the music industry moved the big bucks for major artists to live performances – hmmm, sort of like the domination of the theatrical world (especially in the U.S.) by high-production value/"must see" motion pictures; the rest have found "new TV" – and almost totally replaced physical compact discs with downloads and increasingly rapidly by streaming services.

From a "moribund and falling" music business model two plus decades ago, the transitional growth in digital delivery has been monumental in recent years. "The global recorded music market grew by 9.7% in 2018 — its fourth consecutive year of growth — to $19.1 billion, according the latest annual report from the International Federation of the Phonographic Industry (IFPI).

"Streaming revenue grew by 34.0% and accounted for almost half (47%) of global revenue, powered by a 32.9% increase in paid subscription streaming, according to the report. There were 255 million users of paid streaming services at the end of 2018, with paid streaming accounting for 37% of total recorded music revenue. Growth in streaming more than offset a 10.1% decline in physical revenue and a 21.2% decline in download revenue." Variety.com, April 2, 2019.

Ah… it is clear that glomming on to content, volumes and volumes of it, is increasingly viewed by the behemoth entertainment conglomerates as their only path to survival. Owners of digital systems are be equally aware that having lots of branded content could well be the key to keeping consumers on their networks. And so it is and has been for a while.

Comcast bought NBC/Universal including all of its basic networks. AT&T bought DirecTV and then Time Warner (now WarnerMedia, which includes Turner, CNN and HBO). And then there's the voracious Disney: In 1996, Disney bought Capital Cities/ABC for $19 billion, in 2006 Disney acquired Pixar for a combined stock and cash value of $7.4 billion, in 2009 it picked up Marvel for $4.3 billion (in 2013, $100 million more to buy out distribution rights to a few Marvel titles held by Paramount), buying Lucasfilm in 2012 for $4.06 billion, but the piece de resistance, 21st Century Fox (minus the Fox lot and some broadcast assets retained by the Murdoch family and their shareholders), was acquired by Disney for a whopping $71.3 billion.

The driving force behind such massive acquisitions? CEOs watched nothing entertainment companies grow so fast that their values equaled or exceeded the values attributed to entire major studios. Streaming and the extreme values that both Amazon and Netflix generated in a

very short period of time. From its founding in 1997, Netflix has grown into the largest streaming service in the world, about 150 million subscribers worldwide as of this writing.

"Netflix — whose name has practically achieved verb status — was the fastest-growing brand from 2018-19 among American companies, according to a new study by Brand Finance, a global brand-valuation consulting firm.

"The streamer's estimated brand value more than doubled over the past year, growing 105%, to $21.2 billion, per the study. Brand Finance calculates values of brands using 'royalty relief' methodology, which involves estimating the likely future revenue that are attributable to a brand by calculating a royalty rate that would be charged for its use." Variety, March 28, 2019. The very word, "Netflix," send quivers of fear and anger through the bodies of big-company CEOs in the entertainment industry. Time Warner, Disney, Comcast, and AT&T CEO's were no exceptions. Obviously. They were playing catch-up, and they clearly did not like dealing from so far behind.

There's a lot of competition brewing, and many believe that has Netflix maxed out, at least in the U.S. market. The PwC Global Entertainment & Media Outlook 2019–2023 (released June 5, 2019) said it simply: "Netflix appears to be nearing its peak subscriber point in the U.S… The first-mover advantage in streaming video that Netflix has capitalized on to date continues to be eroded, as the industry begins to fragment, with more and more companies entering the market, from pay-TV heavyweights to specialized, niche players." The recent acceleration of major corporate mergers and acquisitions in the entertainment space seemed to be focused on building streaming competition. The dollars involved were staggering.

After the Fox acquisition in March of this year, which required approval from governments all over the world, Disney controlled a full 27% of the U.S.-based theatrical motion picture industry, picked up a greater ownership share of Hulu (in May, it subsequently closed a deal with Comcast to buy the rest) and began a push to create a new streaming service able to compete with Netflix.

In the course of its negotiations to acquire Fox, facing competition from Comcast, Disney was forced to up its bid by $20 billion, and that extra cost literally pushed Disney to justify that extra sum by generating extra revenue fast – not really possible – or by slashing costs every way it could. In March, when the acquisition closed, it announced an immediate cut of Fox/Disney employees from top to bottom of an initial 4,000 employees, with experts predicting at another 3,000 would be let go in the near term. Disney issued a "layoff" warning on May 15, 2019.

With the two most profitable motion picture franchises in history, *Avatar* and the recent *Avengers: Endgame*, ownership of Hulu, you'd think Disney is just killing it: "Conventional wisdom may hold that the Walt Disney Co. has been firing on all cylinders, with its $71.3 billion partial merger with 21st Century Fox closed, streaming service Disney+ on pace to launch Nov. 12 and *Avengers: Endgame* rewriting the record books. But there are signs that a perfect storm of (gasp!)

mediocrity for the $240 billion conglomerate may be on the way thanks to digital investments and the film calendar — at least for the short term.

“Disney CFO Christine McCarthy disclosed May 8 that the creation of Disney+ and ramp-up of ESPN+ will dent operating income to the tune of about $460 million in the current quarter alone. The company intends on spending about $2.5 billion on original and licensed content for Disney+ in fiscal 2020, rising annually to $4.5 billion in fiscal 2024. Peak operating losses for the upcoming streamer are expected from 2020 to 2022 before it hits profitability in 2024. Oh, and its $400 million investment in Vice Media is essentially worthless.

“These digital expenditures will occur as Disney services its debt load, which swelled to $57 billion post-Fox, and as its TV business suffers from 2 percent annual cord-cutting (operating income at Disney Media Networks fell 3 percent in fiscal 2018). Plus, CEO Bob Iger [completed a purchase of the remaining non-Disney stake in Hulu, which required] Disney to shell out about $5 billion to purchase Comcast's one-third stake in that streamer.

“‘The costs are definitely making their way to the financial statements,’ says Moody's lead analyst Neil Begley. ‘I'd say Disney is entering a high-scale investment cycle, and they'll eventually feel a hangover.’ And Disney may also have to contend with a (relatively!) soft 2020 film slate, with *Avatar 2* pushed a year to Dec. 17, 2021, while the next *Star Wars* movie won't debut until Dec. 16, 2022.” HollywoodReporter.com, May 13th. Are you listening, entertainment bar?! How do studios respond to such pressures in their deal-making?

Here’s another little tidbit apparently under consideration, how Disney may well deploy its new and massive leverage against competitive program suppliers with their Hulu streaming service: “Most shows in the future will originate from Disney-owned studios, but where another studio wants to sell a show to the service, Hulu will ask that a Disney shop (like ABC Studios or 20th Century Fox Television) come on as co-producer, ensuring long-term profit sharing.” SeekingAlpha.com (investment analysis), June 21, 2019.

And then there’s the combined WarnerMedia AT&T debt of $170 *billion* generating somewhere around $6.7 *billion* a year in interest payments alone. It’s no secret that this new conglomerate is putting together its own massive layoff and cost-cutting plans. Turner, CNN and HBO, part of the WarnerMedia group, have already offered buyouts to long-standing employees willing to leave their companies early. Having passed global judicial and administrative reviews with little resistance, these combinations are here to stay.

Even with a very successful final season of *Game of Thrones* (WB/HBO), the post-merger world of AT&T/WarnerMedia did not begin with numbers that made anyone feel good, well beyond the massive debt noted above. With all the expect red ink, all that debt, AT&T needed to ramp up its cash flow. In March of 2019, “AT&T [began] overhauling its DirecTV Now pricing and packaging

strategy — including hiking prices for existing customers by $10 across the board — a move that could lead to more subscriber losses for the company's flagging pay-TV business.

"At the same time, AT&T [announced that it] is launching two new DirecTV Now packages: Plus, at $50 per month for up to 46 channels; and Max, $70 per month for up to 59 channels. Both include AT&T-owned HBO, HBO Family and HBO Latino along with networks from WarnerMedia (Turner), NBCUniversal, Disney and Fox, and exclude channels from A+E Networks, AMC Networks, Discovery and Viacom." Variety.com, March 13, 2019. The old DirecTV packages were no longer available to new subscribers. A little over a month later, the initial results were in.

"AT&T missed on the top-line with first quarter 2019 sales coming in under Wall Street targets. DirecTV continued to bleed subscribers — including a net decline of 83,000 DirecTV Now customers — partially offset by 3.3% revenue growth at WarnerMedia although sales in the media segment were lighter than analysts expected.

"The telco's revenue for Q1 of 2019 was $44.83 billion, with net income of $4.10 billion (down 12% from $4.7 billion in the year-ago period). Adjusted earnings per diluted share were 86 cents. Wall Street analysts' consensus estimates were revenue of $45.1 billion and EPS of 86 cents.

"WarnerMedia revenue of $8.38 billion was up 3.3% year over year, below analyst estimates of $8.45 billion. Each division reporting operating income gains. Warner Bros. operating income was up 42.8% on theatrical revenue gains of 12.7% (largely from 'Aquaman' carryover); Turner was up 7.0%; and HBO grew 6.0% year over year.

"HBO revenue declined in the 7% in first quarter, to $1.5 billion, which was related to its ongoing carriage dispute with Dish Network since November 2018, according to AT&T. Turner revenue was down 0.4% in Q1, to $3.4 billion; Turner ad revenue dropped 6% in Q1, which AT&T said was primarily due to the shift of NCAA Final Four games (which occurred in Q2). Warner Bros. revenue was $3.5 billion, up 8.6% year over year.

"AT&T noted that the 'Game of Thrones' season 8 premiere broke HBO's viewership records — and the show drove record subscribers to HBO Now — and that DC Entertainment's 'Shazam!' has already grossed more than $300 million worldwide.

"Meanwhile, the AT&T Entertainment Group lost a whopping 544,000 net subscribers for DirecTV and U-verse TV, to stand at 22.4 million at quarter's end (down 2.4% sequentially). It dropped 83,000 DirecTV Now subs, declining 5.2% in the period to 1.5 million over-the-top customers, as AT&T ended promotional pricing and hiked rates for OTT subscribers. Revenue in the Entertainment Group (which includes AT&T's broadband and legacy wireline businesses) dropped 0.9%, to $11.33 billion, while operating income increased 12.9% to $1.48 billion.

"The company's key Mobility wireless segment generated revenue of $17.57 million (up 1.2% year over year), with a 4.5% decline in equipment sales offset by higher service revenue. Wall Street had pegged $17.65 billion in Q1 revenue for the segment. AT&T reported 80,000 postpaid phone net adds vs. 49,000 postpaid net adds in the year-ago quarter." Variety.com, April 25, 2019. Ouch!

Some said it was a tech/telco giant trying to compete in a non-linear story-telling world, an uncomfortable marriage at best. Would that mean that the Fox-Disney merger had a better chance, since Disney was well-established in the original content space? What would the WarnerMedia streaming universe – conveniently labeled "HBO Max" – look like, and how would it generate enough content to compete with Netflix and Disney+? Whatever the underlying story, the sheer dollars at risk put huge pressures on these new media structure at levels never experienced before in the entertainment industry. They also created new, mega-powerful combinations that seemed able to dictate massive competitive changes imposed on an already-terrified Hollywood. With a hint of desperation to "make it work" at all costs.

You can bet that Disney and WarnerMedia have already started looking very carefully at reducing what they pay to produce content – are you reading this, lawyers? – pay for people who do not generate more than their cost and the spend on overhead. It isn't going to be pretty, and it presents an opportunity, in a field of fewer networks and studios, for every such company in entertainment to pay less to providers and talent. It's all about the big boyz now. Even as Congress moves to level the playing field to favor consumers in some arenas, like reversing the F.C.C.'s elimination of "net neutrality" requirements – which reversal allows carriers to prioritize online transmission of content or delivery ("discriminate" or "play favorites" might be better descriptions) – pro-business-crony Donald Trump has promised to veto that effort.

Feeling the pressure yet, everybody? Consolidation, merger fever and new business growth, has also redefined the talent agency business. In the spring of 2019, as agents and the Writers Guild of America (WGA) battled over the greatest profit center for all the larger agencies – a percent of the aggregate budgets/license fees paid to such agencies as "packaging commissions" plus direct content ownership – television networks and program suppliers were grinning in the hopes of getting rid of those fees entirely. Let the agents go back to the 10% of talent and rights fees that they gave up in order to get the vastly higher packaging commissions. Laughing harder because everyone was already feeling the downward pressure on talent and rights fees and payments.

It was an old story, at least as far as Hollywood was concerned. Back in the 1960s, under the John F Kennedy administration, MCA/Universal found itself in a similar bind: an agency with a massive production capacity. "In the midst of the grand jury's [antitrust] investigation, MCA purchased Universal Pictures and its parent company, Decca Records. The government immediately went

to court, seeking to block MCA's takeover of the corporation. However, after lengthy negotiations between attorneys for the Justice Department's Antitrust Division and MCA, a consent decree was issued and the case was considered closed. The litigation forced MCA to choose whether it wished to be either a talent agency or a production company. Considering that its production efforts yielded nearly ten times more money than the talent agency, the decision was an easy one: MCA dissolved its talent agency." Dan E. Moldea, *Dark Victory: Ronald Reagan, MCA, and the Mob* (Viking Press, 1986), Chapter One. Cut to: present day.

Relying on revenues from personal service income, money tied to the very personal relationship between agents (who are notorious job-hoppers) and individual talent, was not a business plan that Wall Street investors and fund managers found reliable. Celebrity and fame were hardly permanent, particularly in an era of changing values. Packaging entire television series and directly owning the content itself – asset-based structures – were the stuff financiers understood.

The larger and most powerful agencies had engaged in heavily-leveraged mergers and acquisitions, and the debt levels required a growth-directed business strategy. These agencies *needed* investors now! Some agencies carried *billions* of dollars of debt. If payment deadlines passed without extension, if interest rates climbed, they faced ruin. Loyalty to individual creative talent, starting with writers, was clearly no longer the driver of the "agency" business, perhaps now a misnomer.

Amidst all of this industry reconfiguration, larger talent agencies have taken on private equity partners, diversified into parallel businesses, are as much content producers and distributors, corporate consultants with marketing and data-metrics groups, etc., etc. To create liquidity, respond to their existing investor demands for higher-level rates of return and manage large tranches of debt with approaching payback dates, there has been a pressure to turn service-driven agencies into asset play.

On May 23, 2019, Endeavor Group Holdings, Inc. (the parent of the old-world William Morris and Endeavor legacy talent agencies/later WME) filed an S-1 (intention to file a public offering) with the Securities and Exchange Commission. Did underwriters Goldman Sachs, KKR, J.P. Morgan, Morgan Stanley and Deutsche Bank Securities think this was a good time for an initial public offering on the New York Stock Exchange or did Endeavor feel pressure from its lenders? What is Endeavor anyway? A talent agency or a lot more?

"'There are no other publicly traded companies like this,' says Matt Kennedy, senior IPO market strategist for Renaissance Capital. Kennedy points to the company's lack of free cash flow and a high debt-to-earnings ratio as potential red flags for investors.

"Endeavor is composed of a disparate set of assets — from Professional Bull Riders to the Miss Universe pageant to the Miami Open tennis tournament to the Frieze art fair franchise — which

don't offer a lot of natural synergies to generate economies of scale. In its IPO pitch, Endeavor emphasizes WME's role as a wellspring for relationships with stars such as Dwayne Johnson, who can work across the Endeavor 'platform' to launch live event businesses, secure endorsement deals and licensing and merchandising pacts, as well as launch a YouTube channel and a production venture, all while WME helps him land top movie and TV roles…

"The financial figures disclosed in the company's prospectus filed May 23 with the Securities and Exchange Commission show that Endeavor is burdened by heavy debt, steady losses in some units, negative cash flow and big capital needs for start-up efforts such as Endeavor Content and Endeavor Streaming… After a spree of more than 20 acquisitions since 2012, Endeavor has more than doubled in size and now has 7,000 employees in 20 countries.

"There are questions about the long-term health of the company's single biggest driver of earnings, the mixed martial arts giant UFC. And WME, the agency that's central to Endeavor's strategy of leveraging its access to top-tier talent, is in the thick of a nasty fight with the Writers Guild of America that threatens a key source of income: TV series packaging fees [charging a percentage of the budget of production plus a hefty piece of the upside; the Guild forced writers to fire their agents who would not accept a new code eschewing packaging fees in April of 2019]. The sudden loss of WME's writer clients in April, amid the industrywide dispute, underscores the volatility of the talent representation business." Variety.com, June 4, 2019. That talent agency war with the Writer's Guild would seem challenging to say the least.

The working relationship between agencies (represented by the Association of Talent Agents – ATA) and the WGA had been governed for 43 years by a negotiated Artists' Managers Basic Agreement. When that agreement expired, the Guild set about trying to force the agencies to restore their primarily loyalty to the creative individuals behind everything Hollywood does. They demanded a new code of conduct from agencies. Packaging commissions and the ability to fund, operate and own production companies was, in the eyes of the WGA, an unsustainable conflict of interest. To the agencies, not being able to engage in this lucrative aspect of the entertainment industry represented an inability to attract and hold traditional investors, now desperately needed to support these huge new agency-based combinations.

Litigation between the Guild and ATA-member agencies intensified. Challenging traditional statutory and judicial antitrust exemptions accorded labor unions, agency giants WME, CAA and UTA claimed that the WGA had stepped outside of that exemption and was exerting unprotected market manipulation.

As of this writing, WGA has forced their members to fire their agents and attempted to allow lawyers and personal managers to negotiate for writers without licensed talent agents in the mix. But under an obviously archaic law, California forbids entertainment employment deals from being secured, or even negotiated, by anyone other than licensed talent agents… even by fully-

licensed lawyers. While New York's restrictions are less draconian (but woe to the NY lawyer who sends a client to California to work without an agent in the mix), the ATA announced to the world that they would inform the California Labor Commissioner (or its NY counterpart) as to lawyers and managers who were violating the law. Aside from being able to issue "cease and desist" letters, the California Labor Commissioner has let it be known that where there were such employment transactions, such unlicensed representatives were not entitled to be paid. Ugly! More disruptions seared through the entertainment universe.

The industry also found other material consumer patterns changing. Competition? Apples, oranges and video games? According to the April 11, 2019 Variety, "In a study of 94 countries, Eurodata estimated that average daily TV viewing time in 2018 was down only one minute from the previous year, although that number varied significantly from territory to territory – in the U.S. it decreased nine minutes, whereas in parts of Asia the number grew.

"According to Eurodata Worldwide vice president [Frédéric] Vaulpré, 'If we put this into perspective by looking at how these figures change over the long term, in the most recent years, viewing times around the world are down slightly, but are still at a comparable level to the early 2000s. The American continent and Europe have broadly exceeded the global average since the beginning of the 1990s. Over the last 25 years, daily viewing time has been stable in North America and has even increased in South America and in Europe. TV is in good health and is also benefitting from new consumer practices.'"

Nevertheless, there are little hints in those numbers. Nine minutes less in the U.S.? What does that really mean? Netflix sees the real competition for eyeballs only in part from other television programmers… but also from the massive growth of online video gaming. Gamers now average in their mid-30s and are 45% female. Netflix' January 17, 2019 shareholders' report is remarkably candid, making a special reference to the changing competitive landscape: "In the U.S., we earn around 10 percent of television screen time and less than that of mobile screen time,' the report states, noting 'a very broad set of competitors.' Then comes the line, 'We compete with (and lose to) *Fornite* more than HBO.'… According to ***Deadline***, which cites Neilsen estimates, *Fortnite*, a free-to-play game with in-game purchases, generated the most annual revenue of any game in history, $2.4 billion in 2018…

"Video games, in summation, shouldn't be written off. Do you know what the most lucrative piece of entertainment of all time happens to be? It's not a movie or a TV show. It's a video game, *Grand Theft Auto V*, which last April had **sold more than 90 million units** (roughly $6 billion). Now, gaming sales and movie ticket sales aren't exactly comparable statistics, but it's still an impressive number that is routinely lost in this conversation." Nick Romano writing for the January 18, 2019, ew.com (Entertainment Weekly). Nine minutes… and falling.

But competition battles are not just among and between entertainment conglomerates, governments and consumers. There are other forces seeking to redefine entertainment creative relationships from the ground up. Unions and trade associations, long used to some level of statutory and/or judicial relief from antitrust laws may not be happy with governmental agencies deciding to take another look at an industry that Donald Trump appears to hold in particular disdain. Try this little battle on for size: "The Justice Department has warned the Academy of Motion Picture Arts and Sciences that its potential rule changes limiting the eligibility of Netflix and other streaming services for the Oscars could raise antitrust concerns and violate competition law.

"According to a letter obtained by *Variety*, the chief of the DOJ's Antitrust Division, Makan Delrahim, wrote to AMPAS CEO Dawn Hudson on March 21 to express concerns that the new rules would be written 'in a way that tends to suppress competition… In the event that the Academy — an association that includes multiple competitors in its membership — establishes certain eligibility requirements for the Oscars that eliminate competition without procompetitive justification, such conduct may raise antitrust concerns,' Delrahim wrote.

"The letter came in response to reports that Steven Spielberg, an Academy board member, was planning to push for rules changes to Oscars eligibility, restricting movies that debut on Netflix and other streaming services around the same time that they show in theaters.'" Variety.com, April 2, 2019. But even as some biggies are being questioned, the potential of other biggies rising and dominating looms large. Opportunities or another set of gatekeepers?

Indeed, said the agents and lawyers generating income representing talent and rights holders, there's at least one more player who could change everything. One of the biggest companies on earth Apple (NASDAQ: APPL)! Perhaps?! On March 25, 2019, Apple CEO Tim Cook mounted the presentation stage and, after introducing a new Apple credit card format, proceeds to tout Apple's new streaming service. But what followed looked a whole lot like a standard "here's what next season will look like" that the major broadcast networks had been doing for decades. The industry was underwhelmed; you could hear the sigh from executives at Netflix, Amazon, Disney and AT&T.

"How underwhelming? Netflix (NASDAQ: NFLX) was widely expected to face a tough competitor in AAPL's new Apple TV+ video streaming service. Finally! A competitor with really deep pockets. But instead of Netflix stock taking a hit on the announcement, the script was flipped: NFLX closed up 1.45% while Apple stock was down 1.2% at the end of the day." InvestorPlace.com, March 26th.

Are we having fun yet? Litigators perk up your ears. All of this consolidation may have received federal regulatory approval, but it does not vitiate private antitrust violations and the massive complexity that mergers have created for the acquiring companies. While the new behemoths

might be able to mitigate the damage in new agreements with talent and rights holders going forward, these melded entities have to deal with upside agreements inherent in content deals they have now acquired. There are so many new interrelated entities, so many allocations and pricing decisions that are always questionable. No one really believes that "arm's length" pitch. The "Chinese wall" is made of see-through paper.

First, we all need to laugh at any of these new combined studios when they use the word "precedent," always the argument of a weak mind in stagnant times. For example, the day the 21st Century Fox/Disney deal closed, March 20, 2019, ***all*** Fox and Disney precedents died. Totally new company with a totally new structure. Still, Disney has announced all over the entertainment trades that they are placing all their high-profile content on their new streaming services, with less than subtle hints that they will be able to do this at below market rates.

Two years ago, Disney withdrew all of its Disney/Marvel shows from Netflix. Netflix also let Disney know that they were no longer interested in any Disney content, anyway. A complete break? Not exactly. It seemed that way… until you really look: The "Walt Disney Co. parted ways with Netflix Inc. in a public declaration of war. The owner of 'Star Wars,' Marvel and Pixar movies would stop licensing films to the world's most popular paid online TV network. Instead, Disney planned to keep them for its own streaming services.

"Yet the media giant left out a key detail: Under their current deal, every movie released between January 2016 and December 2018 — including epics such as 'Black Panther' — will be back on Netflix starting around 2026, people familiar with the matter said… Similar issues confront other media titans such as NBCUniversal and AT&T Inc., the owner of HBO and Warner Bros. Netflix, which has about 150 million subscribers worldwide, has some of their most-popular shows locked up for years." Los Angeles Times, June 2, 2019. But the handwriting is on the wall, and clearly Disney and its competitor-brethren streaming services are not about to continue to let their product enhance Netflix for long. Big companies feeding their own new or newly acquired services are absolutely going to use their best content to drive up the values of those nascent services. Not Netflix!

Folks who made deals with upside at Fox now are stuck in the Disney universe, and Disney participants are going to watch Disney build a network, probably by placing their work into a Disney streaming network at below market and alienating the other buyers by becoming their competitor. So, Disney can also claim that there are no other buyers for their controlled content.

Why do I think Disney will be dumping its best content into their streaming service at below what that content might otherwise generate in an open bidding? Their fee structure says it all. As Netflix upped its "basic" monthly subscription plan effective in May of 2019 to $8.99, the "standard" plan (adding an additional device and HD) to $12.99 and its "premium" plan (four devices and ultra-HD) to $15.99 and Warner suggesting its HBO/Cinemax-driven SVOD service

(probably going into a beta test in the fourth quarter of 2019 and fully online in the first quarter of 2020) would be between $16-17/month, Disney was looking to begin with an exceptionally low price that should attract consumers.

With pressure on Disney to justify its $20 billion *increase* from their initial offer to acquire Fox (to $71.3 billion), cost controls – from layoffs to cutting content-related expenditures – are the order of the day from both Wall Street and senior management. You can be pretty sure that they are not going to account to upside participants in a way that would reflect full market pricing for content placed on a start-up streaming service.

And then there's the short-content Quibi SVOD service from Jeff Katzenberg and Meg Whitman, noted above, that nobody seems to understand. Mostly small screen smart phone fare. Well-funded, with investments including from Warner Bros., Viacom, NBCUniversal, Sony and both U.K.'s BBC and ITV, Quibi is being sold as scontent for those "on the go." But what would it look like, and how would it compete with the other streaming services? Scheduled to go live as 5G cell phones are rolling out, Quibi is betting on segmented series (two to four hours presented in ten or fewer minute bits) and mirrors Hulu in offering a variable pricing structure.

"According to Katzenberg, the service will have two pricing tiers at launch on April 6, 2020. The first will cost $4.99 with one pre-roll ad before each video segment — a 10-second ad if the video is less than 5 minutes and a 15-second ad for 5-10 minute videos. The ad-free option will cost $7.99. Whitman also said they expect to have approximately 7,000 pieces of content available within the first year…

"Quibi will pay [top content creators their] cost [of production] plus 20% up to $6 million an hour… In terms of ownership, two versions of each series will exist. The first will be the Quibi version divided into segments, which will be owned exclusively by Quibi for seven years. At the same time, the creator of the project will edit together a full-length version with no segmentation. After two years, the creator will fully own the full-length version and can sell it globally." Variety.com, June 8th. Sounds very pricey for a start-up, but if the programming is good enough… A big maybe, even as their first effort in generating ad support seemed positive.

In mid-June of 2019, the company reported that they had booked $100 million is ad sales towards their first year of operation, two-thirds of the entire first year ad inventory. "Advertisers that have committed ad spending to Quibi include Google, Procter & Gamble, PepsiCo, Walmart, Progressive and AB InBev, according to the company." Variety.com, June 19, 2019. With all these streaming services, however, most experts are focusing on Disney+ as the likely winner in the SVOD race.

"Disney+ will launch in the U.S. on Nov. 12, 2019, and will be priced at $6.99 per month, the company announced… The subscription VOD service represents Disney's next major foray into

the video-streaming wars. By pricing it well below Netflix, the Mouse House is betting it can rapidly drive up Disney+ customer base with a mélange of content that appeals to multiple demographics, including movies and TV shows from its Marvel, Lucasfilm's Star Wars, Pixar and Disney brands." Variety, April 11, 2019. Obvious, yes. Subtle, no. Unlike the opposite result when Apple made its streaming announcement (Apple shares down, Netflix up), Wall Street rewarded the Mouse House the day after the above announcement with a stock rise of 11.5%, dropping Netflix shares by 4.5%. And that was *before* they acquired all of Hulu in May of 2019, a service that accelerates Disney's digital streaming capacity.

Want a concrete example of how premium Fox/Disney product is driving Disney+? Love *The Simpsons*, the longest running scripted television series in U.S. history? Starting on November 12, 2019, all 30 seasons will *stream exclusively* on Disney+. Seasons 31 and 32 are already ordered; by the time season 32 ends, there will be a total of 713 episodes. "In its first year, Disney Plus will offer 10 original films and 25 original series, including three 'Avengers' spinoffs… along with nearly all the 'Star Wars' movies, the entire Pixar library and family-focused movies and shows from its Fox library like 'The Sound of Music' and 'Malcolm in the Middle.'

"Disney said it intended to roll out the streaming service in Europe and Asia starting next year. It expects subscribers to total 60 million to 90 million by 2024… 'We are all-in,' [Disney CEO Bob Iger said as he announced his plans]." New York Times, April 11, 2019. While Disney touted an investment in original productions for the channel of $1 billion in fiscal 2020, the content-devouring new channel would need to feast on Disney's vast library at start-up-justified pricing. Represent anyone having upside in a Fox or Disney product?

Smell the opportunity… and the risks? Does the backend now involve puts, fixed payments against a percentage upside – box office bonuses in film and fixed sums as more series cycles are produced against points for TV. Litigators start your engines, from the fees one operating division of affiliate pays another – no matter what the contract appears to waive – to the allocations of revenues between commonly-controlled companies… to potential antitrust violations.

V. Conclusion.

If you aren't shaking in your shoes, you should reread the above. Add to this quagmire the impact of bankruptcies past – from MGM to The Weinstein Company – to the bankruptcies that will inevitably ripple through the entire industry. Rights and income lost, as post-Chapter 11 libraries are now bought and sold like baseball trading cards.

Notice how I mostly skipped over social media? Oh, a little on privacy and a touch of "fake news" regulation, but the *phenomenon* of social media is now old news. While issues still abound, Europe and Asia will beat up Facebook, Twitter, Google, etc., etc. Don't worry about it. But

practicing law in this brave new world requires much more than complicated statutory and compliance. Pretty much everything has changed.

Now is not the time to use those same-old, same-old forms. Most forms are going to need a ground up redo. It is also not the time to take your last deal and up it by 10% on your next; deals are likewise going to require a ground-up revaluation, from cash upfront to upside or the very necessary substitutes we need going forward.

Entertainment lawyers, unite. Change is upon us. Change like we have never seen before. Hyper-accelerating change. Prepare! One more time: Equally, now is the time to laugh, and laugh hard, when some studio or network business affairs executive utters a word that needs to be banned from the entertainment industry forever: PRECEDENT.

OPTION AGREEMENT
SCREENPLAY

As of August _____, 2017

_____
_____
_____

Re: [NAME OF PROJECT]

Dear _____,

The following will confirm the Agreement between _____, of _____ (sometimes called "Producer"), and you (sometimes called "Writer"), regarding the screenplay written by you entitled "_____" ("the Screenplay"). The first theatrical feature based on, or substantially based on, the Screenplay is called the "Picture".

1. Option: In consideration of the sum of One Dollar ($1.00) (the "Initial Option Fee") and other good and valuable consideration, Writer hereby grants to Producer the exclusive option ("Option") to purchase all rights in and to the Screenplay, for exploitation in all media now known or hereafter devised or discovered throughout the universe, in perpetuity, including but not limited to motion picture, television, home video, digital transmission, ancillary, subsidiary, underlying and merchandising rights to the Screenplay, as such rights are more fully set forth in Exhibits "A" and "B" affixed to this agreement.

2. Options

(a) First Option Period: The length of the term for the initial Option ("First Option Period") shall be for two (2) years following the date of this Agreement.

(b) Second Option Period: Producer may extend the Option for an additional eighteen (18) months from the end of the First Option Period ("Second Option Period") by giving written notice to Writer, along with a payment of One Dollar ($1.00) prior to the expiration of the First Option Period.

3. Purchase Price:

(a) If Producer exercises the Option, as consideration for all rights granted and assigned to Producer and for Writer's representations and warranties, Producer agrees to pay to Writer, and Writer agrees to accept, _____ percent (_____%) of the direct certified production budget for the Picture less contingencies, financing costs, bank fees, interest, and bond fees (the "Purchase Price"), payable upon exercise of the option to acquire the Property or the commencement of principal photography of a Picture based on the Screenplay, whichever occurs first, but in no event less than _____ Dollars ($_____) and not more than _____ ($_____).

(b) The Purchase Price shall be paid to you upon our notice to you that Producer is exercising the Option, but not later than the first day of principal photography of the Picture.

(c) In addition to the above and if you receive screen credit as a writer for the Picture, you shall be paid a sum equal to either (i) _____ percent (_____%) of 100% of the Net Profits, if any, received by Producer in the United States in U.S. dollars from the distribution and exploitation of the Picture if you are accorded a shared Screenplay By or Written By credit on the Picture; or (ii) _____ percent (___%) of 100% of the Net Profits, if any, received by Producer in the United States in U.S. dollars from the distribution and exploitation of the Picture if you are accorded a sole Screenplay By or Written By credit on the Picture.

(d) For the purposes hereof, "Net Profits" shall be defined, computed, accounted for, and paid as follows:

(i) if a single entity both finances one hundred percent (100%) the production of the Picture and distributes the Picture in all territories of the world, then in accordance with the standard definition utilized by such entity, subject to such changes as the parties may agree to in writing following good faith negotiation within customary motion picture industry parameters for a person of Writer's professional stature; provided, however, that the definition of net profits applicable to Writer hereunder shall be no less favorable than the definition applicable to the individual producer of the Picture (excluding any so-called over budget penalties or cross-collateralization provisions);

(ii) if one entity does not so finance and distribute the Picture, then in accordance with Producer's standard definition of net profits, subject to such changes as the parties may agree to in writing following good faith negotiation within customary motion picture industry parameters for a person of Writer's professional stature; provided, however, that the definition applicable to Writer hereunder shall be no less favorable than the definition applicable to the individual producer of the Picture (excluding any so called over budget penalties or cross-collateralization provisions).

4. Rights Granted: In consideration of the above Purchase Price, and on condition that the Option is timely exercised and the Purchase Price is paid to Writer, Writer hereby grants and assigns to Producer all rights (including but not limited to motion picture, television, home video, digital transmission, ancillary, subsidiary, underlying and merchandising rights, and Rental and Lending Rights as defined and agreed to in Schedule 1 of Exhibit “B” to this agreement), throughout the universe, in all media, in perpetuity in and to all writings by Writer concerning the Screenplay, including but not limited to the story, all treatments, and all drafts of the Screenplay, and any other drafts or rewrites written to date or in the future (herein collectively called the "Writings"), which Producer shall own in its entirety. Such grant of rights is further set forth in Exhibits “A” and “B” to this agreement, which Exhibits are incorporated into this agreement by this reference.

5. Credits.

(a) Writing credits on the Picture shall be determined and given pursuant to the WGA West Basic Agreement and Credit Manual, whether or not the Writers Guild has jurisdiction. If the Writers Guild has jurisdiction, the Writers Guild will determine all writing credits on the Picture. If the Writers Guild does not have jurisdiction, and the parties cannot agree on writing

credits, they shall be determined by expedited arbitration conducted in Chicago, Illinois under the rules and procedures of the American Arbitration Association, using a single arbitrator who shall be a neutral attorney familiar with the entertainment business. The arbitrator shall use the Writers Guild Credit Manual. Whether or not the Basic Agreement applies, the writing credit shall be given on screen and in paid ads as required by the Basic Agreement.

(b) All other aspects of such credit shall be determined by Producer in its sole discretion. Producer shall contractually require all distributors with whom Producer enters into agreements to honor all credit obligations to Writer, but no casual, inadvertent or third party breach of the credit provisions of this agreement shall constitute a breach of this agreement. In the event of failure to give credit, Producer shall use its best efforts, on a prospective basis, to require such distributors to correct any omission or failure to give Writer credit.

6. Representations and Warranties. Writer represents and warrants that (a) Writer has the legal right and authority to enter into this Agreement and to grant the rights being granted hereunder; (b) the Writings are and shall be totally original with Writer, do not infringe upon the copyright of any third party, and do not invade the privacy of any third party, defame any third party or in any other way violate the rights of any third party; (c) Writer is the sole author of the Writings; (d) the Writings have not been published; (e) no written or oral agreements or commitments whatsoever with respect to the Writings or with respect to any right therein, have heretofore been made or entered into by or on behalf of Writer; (f) there are no monies due third parties by reason of the execution of this Agreement and/or the exercise of the Option hereunder; and (f) there are no claims, demands or any form of litigation pending or threatened with respect to the Writings. Writer agrees to indemnify, defend, and hold Producer and its officers, employees, successors and assigns harmless from and against any and all claims and costs, including, without limitation, reasonable attorneys' fees and disbursements, arising, directly or indirectly, from or out of any breach or alleged breach of such representations and warranties, the cost of enforcing any right to indemnification hereunder, and the cost of pursuing any insurance providers. Producer similarly indemnifies Writer with respect to any material Producer or its assigns furnishes to Writer or adds to the Screenplay, and hold Writer harmless from and against any and all claims and costs, including, without limitation, reasonable attorneys' fees and disbursements, arising, directly or indirectly, from or out of the use in the Screenplay or Picture of any material furnished by Producer or its assigns.

7. Short Form Option and Assignment: Attached to this agreement is Exhibit "A" (Short Form Option) and Exhibit "B" (Short Form Assignment). Writer shall date and execute all copies of Exhibits "A" and "B." Exhibit "B" shall be held in trust by Producer. If the Option expires without being exercised, Producer shall return all copies of Exhibit "B" to Writer.

8. Notices: All notices to be given under this agreement shall be in writing, and shall be personally delivered, mailed with delivery confirmation, sent by ground or air freight with delivery confirmation, faxed by confirmed fax (by a printout confirming delivery of the fax), or given by confirmed email (by a printout of the email) to the parties at their respective addresses as follows:

Producer: _____
_____
_____
_____

With a simultaneous copy to:

_____
_____
_____
_____
ATTN: _____

Writer _____
_____
_____
_____

Any party can change their address under this agreement by notifying the other parties of the new address by a notice satisfying this paragraph.

9. Additional Provisions.

(a) If Producer is furnished with transportation and lodging to the first domestic premiere of the Picture, Writer and Writer's guest shall also be furnished with round trip air transportation (if applicable), ground transportation and location amenities and tickets in the V.I.P section for the first domestic premiere of the Picture, if out of town. If in town, Writer shall be furnished with two tickets in the V.I.P. section.

(b) If Writer receives sole written by or screenplay credit on the Picture the following shall apply: Writer shall have the first opportunity to write the first theatrical sequel, prequel or remake to the Picture, if any, for compensation to be negotiated in good faith, with the writing fee to be, unless agreed otherwise, WGA minimum for a first and final draft screenplay, not original, with no treatment; the purchase price shall be negotiated in good faith, but not less than the cash compensation payable under this agreement for the Picture plus _____ percent (_____%) of 100% of the Net Profits derived from such sequel, prequel or remake if Writer is accorded a shared Screenplay By or Written By credit on the sequel, prequel, or remake; or (ii) _____ percent (___%) of 100% of the Net Profits, if any, received by Producer in the United States in U.S. dollars from the distribution and exploitation of the sequel, prequel, or remake if Writer is accorded a sole Screenplay By or Written By credit on the sequel, prequel, or remake. All writing fees paid to the Writer for any such sequel, prequel or remake to the Picture shall be deducted from the purchase price. If Writer receives sole written by or screenplay credit on the Picture, and elects not to write the first theatrical sequel, prequel or remake to the Picture, if any, Writer shall be paid fifty percent (50%) of the Purchase Price paid to him for the Picture, on the first day of principal photography of such production, plus a sum equal to _____ percent (_____%) of 100% of the Net Profits, it any, derived from such first theatrical sequel, prequel or remake.

(c) Writer hereby grants to Producer the right to use and to authorize others to use Writer's name, likeness and other elements of Writer's identity and biography for purposes of advertising, publicizing and exploiting the Picture, but any such use of Writer's name or likeness may not be used as an endorsement without Writer's prior written consent.

10. Notice and Cure: In the event either party is in material breach or alleged material breach of this Agreement, the non-breaching party shall give Producer written notice describing such alleged breach, and the breaching party shall have ten (10) business days after receipt of such

notice to cure any such alleged breach. If the breaching party cures such alleged breach within such ten (10) business day period, the breaching party shall not be deemed to be in breach of this agreement.

11. Arbitration: Any dispute between the parties shall be settled by binding expedited arbitration, using a single neutral arbitrator, in accordance with the rules of the American Arbitration Association, with hearings to take place in Chicago, IL. Any judgment rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof. The prevailing party may be awarded attorney's fees and other costs, damages and expenses to be determined by the Arbitrator(s) but neither party shall have the right to seek injunctive relief which would enjoin the distribution or other exploitation of the Picture in any medium or market. The arbitrator shall have the right to decide any and all issues relevant to the arbitration including, without limitation, the arbitrability of all issues.

12. Miscellaneous:

(a) This Agreement contains the entire agreement between the parties concerning the subject matter hereof and supersedes any and all prior and contemporaneous agreements, both oral and written, pertaining to that same subject matter. This Agreement cannot be changed except by a written document signed by the parties.

(b) This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, which shall be binding on and inure to the benefit of the parties' respective heirs, successors and assigns.

(c) Producer has the right to assign this Agreement, or any part of this Agreement, to one or more third parties, but Producer shall remain secondarily liable under this Agreement unless the Agreement is assigned to, and the obligations are assumed in writing by, that third party (ies).

(d) Producer shall have the right, during the Option Periods as they may be extended (and thereafter if the Option is exercised), at its expense, to enter into development, pre-production and production activities with respect to any and all productions or works intended to be based on the Writings, and any and all materials (literary or otherwise) prepared by or on behalf of Producer in connection therewith shall, as between Producer and Writer, remain the sole and exclusive property of Producer. Writer hereby grants to Producer the exclusive right during the Option Periods to create, write, produce, distribute, exhibit, reproduce, transmit and perform one or more works to make the general public aware and potential studios/distributors of the Screenplay and Picture and to incorporate into those works one or more characters from the Writings.

(e) The Option Periods and any extensions of the Option Periods shall automatically be suspended for a period of time equal to the duration of any of the following contingencies: (i) Producer's development of the Picture is prevented, hampered, or delayed by reason of any law or ordinance of any jurisdiction, governmental order, or other regulation, fire, act of God or public enemy, labor dispute, strike or threat of strike, or by reason of any other cause, thing, or occurrence not within Producer's control, either of the same or any other nature (including, but not limited to, a strike or other work action by any guild or union, and/or the death, illness, or incapacity of any director or principal cast member); (ii) Writer's material default hereunder;

and/or (iii) any third party claim in connection with the Option and/or any of the rights granted and/or Writer's representations and warranties hereunder.

(f) In the event of an alleged material breach or material breach by Producer, or in the event of a failure to give Writer credit on the Picture pursuant to the Credits paragraph above, Writer's sole remedy shall be an arbitration for monetary damages, and in no event shall Writer be entitled to terminate or rescind this agreement or seek equitable relief, including but not limited to seeking to enjoin or restrain the distribution or exploitation of the Picture.

(g) This Agreement may be signed in counterparts, and may be signed by fax or by scanned email attachment (which fax or email attachment shall include the entire agreement).

(h) The paragraph headings contained herein are for convenience only, and they shall not affect the construction of any provision contained in this Agreement.

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

_____

By_____

Title_____

AGREED TO AND ACCEPTED:

_____

EXHIBIT "A"

SHORT FORM OPTION AGREEMENT—SCREENPLAY

KNOW ALL PERSONS BY THESE PRESENTS: for good and valuable consideration, receipt whereof is hereby acknowledged, the undersigned, _____ does hereby grant to _____ (hereinafter referred to as "Purchaser"), and its heirs, representatives, successors, licensees and assigns forever, the exclusive and irrevocable right and option to purchase and acquire from the undersigned all of his right, title and interest (including but not limited to the sole and exclusive motion picture rights [silent, sound, talking], television motion picture and other television rights, soundtrack, merchandising, literary publishing, music publishing, stage and radio rights, throughout the world in perpetuity) in and to that certain original literary work described as follows:

TITLE: "_____" (WT)
WRITTEN BY: _____
PUBLISHER: Unpublished Screenplay
COPYRIGHT APPLICATION NO.: _____

including all contents thereof, all present and future adaptations and versions thereof, and the theme, title and characters thereof, and in and to the copyright thereof, and all renewals and extensions of such copyright.

The option herein granted may be exercised by Purchaser, or its heirs, representatives, successors, licensees or assigns as provided in that certain Option Agreement dated as of August _____, 2017 between Purchaser and the undersigned, which agreement is incorporated herein by reference.

IN WITNESS WHEREOF, the undersigned has executed this instrument as of _____.

_____

EXHIBIT "B"
ASSIGNMENT OF ALL RIGHTS—SCREENPLAY

1. The undersigned, _____ ("Assignor"), for valuable consideration, receipt of which is hereby acknowledged, does hereby assign, grant, bargain, sell, transfer, convey and set over (all herein called "grant") forever, unto _____ ("Assignee"), the literary material described as follows:

All of Assignor's right, title and interest in and to a screenplay written by Assignor tentatively entitled "_____", including the underlying story ideas and including the results and proceeds of past and future writing services in connection therewith, together with all now or hereafter existing rights of every kind and character whatsoever therein, and the complete and unconditional and encumbered title therein for all purposes, including all titles thereof, and all elements, themes, ideas, stories, plots, incidents, music, lyrics, arrangements, choreography, dialogue, characters, character names, action, revisions, dramatizations, sequels, and other parts and components contained therein, now or hereafter in existence as well as all copies of any and all manuscripts thereof, and all versions and translations thereof, all hereinafter referred to as the "Work".

Assignee shall have full ownership of the Work, including all copyrights to the Work throughout the world, the right to alter, change or rewrite the Work, and to add to or delete from the Work, and the right to use all or only part or parts of the Work, in its sole discretion, and Assignor hereby waives all rights in connection therewith including, but not limited to, the "droit morale" of authors.

2. Without limiting the above, Assignor hereby grants to Assignee the right to produce one or more motion pictures or other productions based on the Work and to exploit, publicize and use such motion pictures or other productions in all media throughout the world in perpetuity, by all means whether or not now known, including but not limited to theatrical, television, digital transmission, and home video exploitation, and exploitation of ancillary and subsidiary rights, including live stage, novelization, merchandising, music publishing, soundtrack and all other exploitation of the Work and all motion pictures or other projects based on the Work. Without limiting the generality of the foregoing, Assignor specifically grants to Assignee, without limitation: the sole and exclusive right, throughout the universe, in perpetuity, to exhibit, record, reproduce, broadcast, televise, transmit, publish, sell, vend, distribute, advertise, exploit, publicize and use for any purpose, in any manner, and by any means, whether or not now known, invented, used of contemplated, the Work, and each and every part thereof, and any and all versions, adaptations, copies and mechanical or other reproductions of all thereof; all publication, novelization, dramatization, performing, merchandising, mechanical reproduction, radio, television and motion picture rights in the Work and each and every part thereof in such manner and to such extent as Assignee may, in its sole discretion, desire; the right to translate the Work and all such versions and adaptations into all or any languages; the right to use the name and likeness of the Assignor as the author of the Work upon which said versions and adaptations, or any of them, is based; the right to use all titles of the Work and any other title or titles, in conjunction with any such versions and adaptations and the right to use all titles of the Work in connection with literary, dramatic and other works not based upon the Work; Rental and Lending Rights as defined and agreed to in Schedule 1 of this Exhibit "B"; and the right to refrain from exercising all or any part of the rights herein granted.

3. Assignor specifically grants to Assignee, without limitation, all copyrights throughout the world including all renewals, extensions, and continuations thereof, whether common law, statutory, or otherwise, in and to the Work, and each and every part thereof, together with the exclusive right to obtain and register copyright and renewal copyright or analogous protection for the Work, whether in the name of the Assignor, Assignee, or otherwise, in Assignee's sole discretion. Assignor further assigns to Assignee all actions and causes of action whether past or future, for infringement or violation of any rights in and to the Work, and all damages, profits, penalties and other recoveries, and all other rights of every kind and character which Assignor may now or hereafter have, directly or indirectly as a result of any such infringement or violation.

4. Assignor agrees to execute, acknowledge and deliver, or to procure the execution, acknowledgement and delivery of all further documents which, in the sole judgment of Assignee, may be necessary or expedient to effectuate the purposes and intent of this Assignment. Assignor irrevocably appoints Assignee or its nominee as Assignor's attorney-in-fact, with full power of delegation, substitution and assignment, for the sole benefit of Assignee, but at Assignee's expense to procure, execute, acknowledge, register and record any and all such copyrights, renewal copyrights and documents, and to institute and prosecute such proceedings as Assignee may deem expedient to protect the rights herein granted and purported to be granted and to the effect the recovery by Assignee of the full benefit of all rights herein granted and purported to be granted. Assignee may take any of the aforesaid actions in its own name, or in the name of Assignor, and at its option, may join Assignor as party plaintiff or defendant in any suit or proceeding affecting the Work.

5. Assignor hereby represents and warrants that (a) the Work is original with Assignor and does not violate the copyright of any third party, and to the best of Assignor's knowledge does not defame, infringe upon or violate the rights of privacy or other rights of any person, firm or corporation; (b) Assignor is the sole author of the Work; (c) the Work has not been published; (d) no written or oral agreements or commitments whatsoever with respect to the Work or with respect to any right therein, have heretofore been made or entered into by or on behalf of Assignor; (e) there are no monies due third parties by reason of the execution of this Agreement and/or the exercise of the Option hereunder; and (f) there are no claims, demands or any form of litigation pending or threatened with respect to the Work. Assignor agrees to indemnify, defend, and hold Assignee, its assigns and licensees harmless from and against any costs incurred by Assignee or its assigns (including attorney's fees) arising out of any breach or alleged breach of the aforesaid representations and warranties. Assignor agrees to execute such documents and do such other acts and deeds as may be required by Assignee or its assignees or licensees to farther evidence or effectuate its rights hereunder, and in connection therewith.

6. The exercise by Assignee of any of said rights shall not be deemed a waiver or abandonment of any other of said rights. All rights herein granted and assigned shall be fully transferable, in whole or in part, without restriction, and shall inure to the benefit of the Assignee's successors, assigns, and licensees. This Assignment is executed by Assignor for himself and his heirs, executors, administrators, next of kin, personal representative, successors and assigns, and shall be binding upon said persons jointly and severally. As used herein, the term "person" includes any association, organization, partnership, business trust or corporation.

7. This Assignment shall be subject to the terms and conditions of the Option Agreement between Assignee and Assignor dated as of August _____, 2017.

IN WITNESS WHEROF, the undersigned has executed this Assignment of All Rights as of _____.

_____

SCHEDULE 1 TO EXHIBIT "B"

EUROPEAN COMMUNITY ("EC") AND OTHER DIRECTIVES CONCERNING RENTAL AND LENDING RIGHTS

(a) Rental and Lending Rights: Assignor acknowledges that the compensation payable under the agreement to which this document is attached includes adequate and equitable remuneration for the "Rental and Lending Rights" (as defined below) and to the fullest extent permitted by applicable law, constitutes a complete worldwide buyout of all Rental and Lending Rights, in perpetuity. Assignor hereby irrevocably grants to Assignee throughout the world in perpetuity, the right to collect and retain for Assignee's own account all amounts payable to Assignor in respect of Rental and Lending Rights and irrevocably directs any collecting societies or other persons or entities receiving such amounts to pay them to Assignee.

(b) Definition: "Rental and Lending Rights" means all rights of Assignor to authorize, prohibit, control or receive money from the rental, lending, fixation, reproduction of other exploitation of the materials, results and proceeds of Assignor's services, or any motion picture, program or other production based thereon, by any media or means now known or hereafter devised as may be conferred upon Assignor under applicable laws, regulations or directives, in any jurisdiction throughout the world, including any so-called rental and lending rights pursuant to the European Community directives or enabling or implementing legislation, laws or regulations enacted by member nations of the European Community. The payments made by Assignee to Assignor under the agreement to which this document is attached are deemed to include sufficient remuneration for all so-called rental and lending rights pursuant to the EC directives, enabling or implementing legislation, laws and regulations enacted by the member nations of the EC.

AGREED TO as of _____

_____

WHAT'S THE SCORE WITH SYNCHRONIZATION RIGHTS

As the composer of a film or TV score or as a songwriter whose song is used in a movie, TV show, advertisement or video game, under the copyright law you own 100% of the copyright in your work from the moment you create the work and "fix it in a tangible medium." However, a composer or songwriter must be careful what documents he or she signs so that those rights are not signed away without fair compensation for the work.

When it comes to the use of music there are two copyrights: one in the musical composition or song and one in the sound recording which is the fixation of the sounds that make up the music. When music is used in synchronization with visual images, whether it is created especially for the particular score or whether it is a pre-existing song that the director wants to use in a scene in a TV show or film, this is referred to as the "synchronization" of music with visual images. Permission in the form of a synchronization license (sometimes referred to as a "synch license") must be procured by the makers of the audio/visual production from both the owner of the sound recording (the artist or record company) and from the owner of the song copyright (the songwriter or publishing company) Sometimes these are one and the same person or entity, sometimes they are not.

A synchronization license may take various forms. If a producer, director or music supervisor decides that a certain pre-existing song is right for a particular scene in a film, TV show, commercial or in a video game, then a synch license covering the master and the composition would be requested. Depending on the length and prominence of the use, if limited solely to use in the film the price can range from a few hundred dollars to tens of thousand of dollars, or more. If the movie company also wants the right to include the music on a soundtrack album, then additional provisions would be required for that use which would pay royalties for each record sold. Also, the song should be registered with the author's performing rights society (e.g., ASCAP, BMI, SESAC, etc.) so that revenues from performances in foreign movie theaters (U.S. movie theaters do not pay performance royalties) and from television broadcast can be collected and paid to the author.

On the other hand, a songwriter may be specifically employed to write incidental music for a film or for a TV commercial. Such an arrangement may be structured as a "work made for hire" whereby the songwriter is employed to write specific music which may ultimately be owned by the producer of the film. There is no set fee for such an arrangement - it can range from a few thousand dollars for a small budget project to hundreds of thousands for a blockbuster film score. However, in such circumstances, since the production company would own the copyright, the author may not be entitled to performance royalties from its performing rights society. This would depend on the negotiation of the contract between the parties.

Since this is a complicated area the details of which are beyond the scope of this article, I would suggest that if such an offer is made to any composer or songwriter, an experienced entertainment lawyer would be a good investment.

My advice on such matters to a prospective client is always "don't sign anything – other than an autograph – unless you have a lawyer review it first!"

Wallace Collins is an entertainment and intellectual property lawyer based in New York with more than 30 years of experience. He was a recording artist for Epic Records before attending Fordham Law School. Tel: (212) 661-3656; www.wallacecollins.com