**UNITED STATES OF AMERICA**
**BEFORE THE FEDERAL TRADE COMMISSION**


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| In the Matter of | ) | |
| POLYGRAM HOLDING, INC., a corporation, | ) | |
| DECCA MUSIC GROUP LIMITED, a corporation, | ) | |
| UMG RECORDINGS, INC., a corporation, | ) | Docket No. 9298 |
| and | ) | |
| UNIVERSAL MUSIC & VIDEO DISTRIBUTION CORP., a corporation. | ) | |

## THE PARTIES' FIRST SET OF STIPULATIONS

### I. Stipulations Concerning the Authenticity and Admissibility of Documents

1. Each document produced to Commission staff by Respondents or their affiliated companies during the investigation (Part II) and/or litigation (Part III) phases of this matter (a "Respondent Document") is authentic, genuine, and a true and correct copy of what it purports to be.

2. Each document produced to Commission staff by Warner Music Group or its affiliated companies during the investigation (Part II) and/or litigation (Part III) phases of this matter (a "Warner Document") is authentic, genuine, and a true and correct copy of what it purports to be.

3. There shall be a presumption that each Respondent Document and each Warner Document was prepared and kept in the regular course of business by the producing party.

4. When a Respondent Document or a Warner Document is offered in evidence, the burden of proof shall rest upon the party opposing the admission of such document to rebut the presumption that such document was prepared and kept in the regular course of business by the producing party.

5. Each document on complaint counsel's exhibit list (CX1 to CX666) is authentic, genuine, and a true and correct copy of what it purports to be.

6. Each document on respondents' exhibit list (RX1 to RX111) is authentic, genuine, and a true and correct copy of what it purports to be.

## II. Stipulations of Fact

1. Tenor (noun) means the highest natural adult male voice, or one who sings this part. *American Heritage Dictionary of the English Language*.

2. The Three Tenors is a musical collaboration consisting of renowned opera singers Jose Carreras, Placido Domingo, and Luciano Pavarotti.

3. The Federal Trade Commission issued its complaint in this matter on July 31, 2001. The complaint alleges that Respondents PolyGram Holding, Inc. ("PolyGram Holding"), Decca Music Group Limited ("Decca"), UMG Recordings, Inc. ("UMG") and Universal Music & Video Distribution Corp. ("UMVD") agreed with competitor Warner Communications Inc. ("Warner Communications"): (a) to restrict price competition, and (b) to forgo advertising. The complaint charges that such conduct violates Section 5 of the Federal Trade Commission Act, as amended.

4. In a separate and parallel proceeding, on September 17, 2001, the Commission made final a consent agreement with Warner Communications. *Warner Communications Inc.*, Dkt. No. C-4025 (Sept. 17, 2001).

5. Each of the four Respondents is a direct or indirect subsidiary of Vivendi Universal S.A., a French corporation.

6. Respondent PolyGram Holding is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 825 Eighth Avenue, New York, New York 10019.

7. Respondent Decca is a corporation organized, existing and doing business under and by virtue of the laws of the United Kingdom, with its office and principal place of business located at 347-353 Chiswick High Road, London, England W4 4HS. Decca is successor to, and was formerly named, The Decca Record Company Limited.

8. Respondent UMG is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 2220 Colorado Avenue, Santa Monica, California 90404. UMG is successor to, and was formerly named, PolyGram Records, Inc. ("PolyGram Records").

9. Respondent UMVD is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 10 Universal City Plaza, Universal City, California 91608. UMVD became the successor corporation to PolyGram Group Distribution, Inc. ("PolyGram Distribution") when PolyGram Distribution merged with UMVD on May 1, 2000.

10. Respondent PolyGram Holding engages in, or engaged in, acts and practices that affect commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

11. PolyGram Records, the predecessor to UMG, engaged in acts and practices that affect commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

12. PolyGram Distribution, the predecessor to UMVD, engaged in acts and practices that affect commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

13. PolyGram refers to a group of firms -- affiliated with PolyGram N.V. -- that were for many years engaged in the business of producing, marketing, and distributing recorded music and videos in the United States and worldwide. Among the firms composing Polygram were Decca, PolyGram Records, PolyGram Distribution, and PolyGram Holding.

14. UMG Recordings, Inc. and Universal Music and Video Distribution Corp. are subsidiaries of PolyGram Holding Inc.

15. In 1998, PolyGram Holding Inc., the Decca Record Company Ltd., PolyGram Records, Inc., and PolyGram Group Distribution, Inc., were subsidiaries of PolyGram N.V.

16. During 1998, PolyGram Holding, Inc. provided services to its subsidiaries, including legal services and human resources services.

17. In 1998, PolyGram Classics and Jazz was a division of PolyGram Records, Inc.

18. In December 1998, PolyGram N.V., a Netherlands corporation, was acquired by The Seagram Company Ltd. ("Seagram"), a Canadian corporation. The music businesses of PolyGram N.V. (*i.e.,* Polygram) were combined with the music businesses of Seagram to form Universal Music Group ("Universal"). Two years later, Seagram Company Ltd. merged with Vivendi S.A. and Canal Plus S.A., to form Vivendi Universal S.A.

19. Warner Communications is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 75 Rockefeller Plaza, New York, New York 10019. Warner is a subsidiary of AOL Time Warner Inc.

20. Warner Music Group refers to a group of firms -- affiliated with Warner Communications -- engaged in the business of producing, marketing, and distributing recorded music and videos in the United States and worldwide. Among the firms composing the Warner Music Group are Atlantic Recording Corp. ("Atlantic") and Warner Music International ("WMI").

21. WMI is a division of Warner Communications. WMI manages and coordinates the music operations of Warner's operating companies located outside of the United States.

22. In 2001, measured in terms of revenues, entities that are part of Universal Music Group collectively are the largest sellers of recorded music in the world, and in the United States.

23. From 1994 through the merger with Universal, Pat Clancy was the Vice President of Finance for Polygram Holding, Inc.

24. Bert Cloeckaert is the Senior Vice President of Commercial Affairs for Universal Music International. During 1998, Mr. Cloeckaert was the Vice President for Polygram in Continental Europe.

25. Richard Constant is general counsel to Universal Music International, Limited, a subsidiary of Vivendi Universal S.A. During 1998, Mr. Constant was general counsel of PolyGram N.V.

26. Kevin Gore has been the President of Universal Classics Group, U.S. since July, 1999. From January, 1998 until the merger with Universal, Mr. Gore was the Senior Vice President and general manager of PolyGram Classics and Jazz. Between the merger with Universal and July 1999, Mr. Gore was the Senior Vice President and general manager of Universal Classics Group.

27. Steven Greene is the business manager of catalog development for Universal Music International. Between 1990 and 1999, Stephen Greene was the commercial planning manager for Decca Records.

28. Between 1994 and 2000, Melchor Hidalgo was the Managing Director of Classics and Jazz in Spain for Universal's Spanish Operating Company and its predecessor.

29. During 1997 and 1998, Rand Hoffman was Senior Vice President of Business Affairs for PolyGram Holding, Inc.

30. Between 1989 and July 1996, Roland Kommerrell was the President of Decca Record Company, Ltd.

31. Between July 1996 and October 1998, Roger Lewis was President of Decca.

32. From 1994 until the merger with Universal, Chris Roberts was President of PolyGram Classics and Jazz, a division of PolyGram Records.

33. During 1998, Paul Saintilan was first, the Director of Strategic Development, then Senior Marketing Director, for Decca Records, and PolyGram's chief liaison with Warner.

34. Since 1997, Dickon Stainer has been the head of Decca records U.K. In 1994, Dickon Stainer was the marketing manager for Warner Classics in 1994 and was responsible for the marketing of the 1994 Three Tenors album.

35. Eric Kronfeld was the president and chief operating officer of Polygram Holding from 1991 until March 1, 1998.

36. During 1998, Pat Creed was Senior Director for Product Development for Atlantic Records and was directly responsible for the marketing and promotional activities surrounding the release of the 1998 Three Tenors album.

37. During 1994 and 1995, Richard Rollefson was the Senior Vice President of Marketing of Decca

38. During 1998, Mark Cavell was the finance director of Decca.

39. Gerald Kopecky is the Senior Vice President of Sales for the Universal Classics Music Group.

40. James Caparro is the chairman and CEO of the Island Defjam Music Group, a subsidiary of Universal Music Group.

41. Kevin Kleinmann was the head of marketing for Decca in 1998.

42. From 1996 to 1998, Phil Wild was the Executive Vice President, Business and Legal Affairs, for Atlantic.

43. From 1996 to 1998, Bob Daly was the Chief Executive Officer of Warner Music Group.

44. From 1996 to 1998, Val Azzoli was a Co-Chairman and Co-Chief Executive Officer of Atlantic Recording Corporation.

45. From 1996 to 1998, Ahmet Ertegun was a Co-Chairman and Co-Chief Executive Officer of Atlantic Recording Corporation.

46. From 1996 to 2000, Margo Scott was Vice President, Business and Legal Affairs, for Atlantic.

47. From 1993 to 1998, Ramon Lopez was the President of Warner Music International.

48. From 1994 to 1998, James Caradine was Executive Vice President for Warner Music International.

49. Since 1993, Anthony O'Brien has been the Chief Financial Officer of Atlantic.

50. During 1997, Anthony O'Brien was Warner's lead negotiator with regard to the Three Tenors contracts with PolyGram and with concert promoter Tibor Rudas.

51. During 1998, Niall O'Rourke was an Director, International Marketing, of Warner Music International concentrating in Classical Music.

52. During 1998, Stuart Robinowitz was senior advisor to Warner Music Group.

53. During 1998, Paul Robinson was Senior Vice President and Deputy General Counsel of Warner Music Group.

54. During 1998, Stephen Kon was an outside attorney for Polygram Holding, Inc.

55. From 1994 to 1998, Roger Sandau was an attorney for Tibor Rudas.

56. From 1994 to 1998, Wayne Baruch was an executive employed by Resorts Production, Ltd.

57. During 1998, Ian MacLaren was an executive employed by Resorts Production, Ltd.

58. Eric Fuller is designated as Respondents' 3.33(c) witness regarding data concerning wholesale prices, price levels, price points, discounting and price reductions related to the 1990 Three Tenors album in the United States from 1990 through the present.

59. Kevin Gore is designated as Respondents' 3.33(c) witness regarding the marketing by Universal Music Group of newly released audio products where certain of the featured artists' catalogue audio products are distributed by a competing music company distributor.

60. Kevin Gore is designated as Respondents' 3.33(c) witness regarding the marketing by Universal Music Group of newly released video products where certain of the featured artists' catalogue video products are distributed by a competing music company distributor.

61. Bert Cloeckaert is designated as Respondents' 3.33(c) witness regarding the marketing by Universal Music Group of newly released audio products where certain of the featured artists' catalogue audio products are distributed by a competing music company distributor in Europe.

62. Bert Cloeckaert is designated as one of Respondents' 3.33(c) witnesses regarding the factual basis for the contentions in Respondents' Third and Fourth Additional Defenses.

63. Chris Roberts is designated as one of Respondents' 3.33(c) witnesses regarding the factual basis for the contentions in Respondents' Third and Fourth Additional Defenses.

64. Stephen Greene is designated as one of Respondents' 3.33(c) witnesses regarding the factual basis for the contentions in Respondents' Third Additional Defense.

65. Stephen Greene is designated as one of Respondents' 3.33(c) witnesses regarding the factual basis for the contentions in Respondents' Fourth Additional Defense.

66. Stephen Kon is designated as one of Respondents' 3.33(c) witnesses regarding the factual basis for the contentions in Respondents' Fifth Additional Defense.

67. Richard Constant is designated as one of Respondents' 3.33(c) witnesses regarding the factual basis for the contentions in Respondents' Fifth Additional Defense.

68. Kevin Gore is designated as Respondents' 3.33(c) witness regarding the sale, marketing, distribution and pricing in the United States of the 1990 Three Tenors audio products during 1998.

69. Kevin Gore is designated as Respondents' 3.33(c) witness regarding the sale, marketing, distribution and pricing in the United States of the 1990 Three Tenors video products during 1998.

70. Gerald Kopecky is designated as respondents' 3.33(c) witness regarding the sale, marketing, distribution and pricing in the United States of the 1990 Three Tenors audio products during 1994.

71. Gerald Kopecky is designated as respondents' 3.33(c) witness regarding the sale, marketing, distribution and pricing in the United States of the 1990 Three Tenors video products during 1994.

72. James Caparro is designated as respondents' 3.33(c) witness regarding the promotion of new products in the United States when catalog products are owned by another company.

73. In the music industry, the term "label company " or "label" refers to a firm that develops, acquires, and produces recorded music.

74. Decca is a "label." Decca is in the business of developing, acquiring, and producing recorded music.

75. Atlantic is a subsidiary of Warner Communications. Atlantic is a label, engaged in the business of developing, acquiring, and producing recorded music. Atlantic operates primarily in the United States.

76. During 1998, recorded music products produced by Decca were distributed throughout the United States, primarily by PolyGram Distribution.

77. Today, recorded music products produced by Decca are distributed throughout the United States, primarily by UMVD.

78. In the music industry, the term "label group" refers to a firm that coordinates, oversees, and assists the operations of several "labels."

79. PolyGram Records was a label group. PolyGram Records, acting through its PolyGram Classics and Jazz division, was in the business of supporting, overseeing, and assisting the activities off several labels, including Decca, Philips Classics, Deutsche Grammophon, and Verve. Recorded music produced (indirectly) by PolyGram Records is distributed throughout the United States, primarily by PolyGram Distribution.

80. During 1998, records produced by the various PolyGram labels were distributed in local markets around the world through PolyGram's network of operating companies (or opco's).

81. In 1998, the Decca Record Company Limited owned copyrights in and to thousands of master recordings.

82. In 1998, PolyGram Group Distribution, Inc. was in the business of distributing and selling audio and video products in the United States.

83. The World Cup is the pre-eminent international soccer tournament, and is held every four years. The World Cup final match was located in Rome in 1990, in Los Angeles in 1994, and in Paris in 1998.

84. Beginning in 1990, Carreras, Domingo, and Pavarotti have come together every four years at the site of the World Cup soccer finals for a combination live concert and recording session.

85. During the 1990s, The Three Tenors recorded three albums, each a mix of operatic arias and medleys of popular songs: *The Three Tenors* (PolyGram 1990), *Three Tenors in Concert 1994* (Warner 1994), and *The Three Tenors -- Paris 1998* (Warner/PolyGram 1998).

86. The Three Tenors first performed together at the Baths of Caracella in Rome, on the eve of the 1990 World Cup final match.

87. The first Three Tenors concert was billed as a one-time event, a joint celebration of Jose Carreras' recovery from leukemia and the World Cup finals.

88. The 1990 Three Tenors concert was organized by artist agent Mario Dradi and by a firm named Top Film. The Tenors and Top Film agreed that the entire net proceeds of ticket sales would be donated to various charities.

89. PolyGram acquired rights to the 1990 Three Tenors performance from Quinn Holdings Ltd., a successor firm to Top Film.

90. Compact disc, audio cassette, and video cassette versions of the 1990 Three Tenors concert were released by PolyGram in August 1990.

91. From 1990 to date, compact disc, audio cassette, and video cassette versions of the 1990 Three Tenors concert have been distributed in the United States by PolyGram Distribution, and its successor UMVD.

92. At the time of the 1990 Three Tenors concert, Jose Carreras was obligated by contract to record exclusively for Warner.

93. In 1990, Warner agreed to waive its exclusive rights to the services of Jose Carreras as a recording artist, thereby permitting Carreras to perform on an audio and video product distributed by PolyGram.

94. Pavarotti, Domingo, and Carreras received no royalties on sales of the 1990 Three Tenors album.

95. During the period from 1990 to 1998, the Decca Record Company Limited owned the copyright in and to the master recording of the 1990 Three Tenors album.

96. During the period from 1990 to 1998, London Records was an alter ego of Decca.

97. During the period from 1990 to 1998, the rights in the United States to the name "Decca Records" was not owned by Polygram Holding, Inc. or any of its subsidiaries.

98. Prior to 2000, the Decca released products in the United States on the London Records label.

99. The 1990 Three Tenors album was released in the United States on the London Records label.

100. The 1990 Three Tenors album became the best selling classical release of all time.

101. Universal Music Group entities and their predecessors, collectively have sold more than twelve million units of the 1990 Three Tenors album.

102. Universal Music Group entities and their predecessors, collectively have sold more than three million units of the 1990 Three Tenors video.

103. On July 16, 1994, the Three Tenors performed at Dodger Stadium in Los Angeles, California on the eve of the final match of the World Cup.

104. In 1993, PolyGram sought to acquire from concert promoter Tibor Rudas the right to distribute audio and video recordings of the 1994 Three Tenors concert.

105. Warner acquired from concert promoter Tibor Rudas the right to distribute audio and video recordings of the 1994 Three Tenors concert.

106. The agreement between Rudas and Warner for the worldwide audio, video, and television broadcast rights to the 1994 Three Tenors concert are reflected in contracts dated October 10, 1993, and are found as CX 232, CX 233, and CX 234.

107. Within Warner, Atlantic was responsible for marketing the 1994 Three Tenors album in the United States, while WMI and its operating companies were responsible for marketing the 1994 Three Tenors album in the rest of the world.

108. At the time of the 1994 concert, Luciano Pavarotti was obligated by contract to record exclusively for Decca.

109. In 1994, Decca agreed to waive its claim to the exclusive services of Luciano Pavarotti as a recording artist, thereby permitting Pavarotti to perform on an audio and video product distributed by Warner.

110. In 1994, Decca agreed to allow Pavarotti to record the 1994 Three Tenors album in exchange for the rights to certain songs recorded at the 1994 concert at Dodger Stadium but not included on the 1994 Three Tenors album.

111. The songs from the 1994 concert to which Polygram obtained rights in exchange for the release of Pavarotti from Pavarotti's exclusive contract were never released by Polygram.

112. At the time of its initial release, *The Three Tenors in Concert 1994* carried a suggested retail list price of $19.98, setting a new price record for a single disc release.

113. In 1994, PolyGram initiated a worldwide campaign to increase the sales of the 1990 Three Tenors album.

114. During 1994, PolyGram actively promoted the 1990 Three Tenors album, with television, radio and print advertising, and point of sale materials.

115. During 1994, Polygram issued a special edition gold version of the 1990 Three Tenors album.

116. Warner achieved platinum sales on ship out of the 1994 album in the United States.

117. During 1996 and 1997, The Three Tenors participated in a worldwide tour, including concerts in Tokyo, London, Munich, New York, Johannesburg, and Melbourne.

118. Warner had no financial involvement in the 1996/1997 Three Tenors concerts.

119. Polygram had no financial involvement in the 1996/1997 Three Tenors concerts.

120. In 1996, Warner issued a special "Three Tenors World Tour Edition," consisting of the original 1994 Three Tenors CD packaged in a new celebratory tour slipcase with a booklet of unpublished photographs and information about The Three Tenors.

121. In 1996, PolyGram released a World Tour Commemorative Edition of the 1990 concert, digitally re-mastered on a gold CD.

122. In 1996, Tibor Rudas and employees of Polygram companies discussed an open-air Three Tenors concert in front of the Eiffel Tower and scheduled to coincide with the World Cup finals in Paris in July 1998.

123. For calendar year 1998, Placido Domingo was not subject to an exclusive recording agreement.

124. Jose Carreras was obligated by contract to record exclusively for Warner through April of 1998.

125. For calendar year 1998, Luciano Pavarotti was obligated by contract to record exclusively for PolyGram.

126. Pursuant to a series of contracts dated October 14, 1997, Rudas licensed the worldwide audio, video and television rights for the 1998 Three Tenors concert. These contracts are found at JX11, CX 205, and CX 206.

127. By contract dated December 19, 1997, Warner sublicensed the audio, video and television rights for the 1998 Three Tenors concert to Polygram for the world, except for the United States. This contract is found at JX10.

128. Chris Roberts and other persons responsible for the Three Tenors project discussed the possibility of having a guest performer perform at the Three Tenors III concert in Paris, including the possibility of asking Madonna to be a guest performer.

129. Roger Lewis (Decca), Paul Saintilan (Decca), Rand Hoffman (PolyGram Holding), and Alex Darbyshire (PolyGram Television) attended a planning meeting with Warner representatives on March 10, 1998.

130. Paul Saintilan's notes from that meeting are CX 389.

131. In June 1998, Kjeld Stefanson of PolyGram's Danish operating company expressed concern that an offer by the Danish company affiliated with Warner Music International of heavily discounted prices on the 1994 Three Tenors album through Christmas 1998 was affecting his sell-in for the 1998 Three Tenors album in Denmark. Kjeld Stefanson's concern was communicated to Rand Hoffman.

132. During the 1990s, and including 1998, Polygram Records, Inc. was one of the entities responsible for (1) marketing and promotion of the 1990 Three Tenors album in the United States; (2) marketing and promotion of the 1990 Three Tenors video in the United States; (3) any decision making regarding the wholesale price of the 1990 Three Tenors album in the United States; (4) any decision making regarding the wholesale price of the 1990 Three Tenors album in the United States; (5) any decision making regarding the advertising strategy for the 1990 Three Tenors album in the United States; and (6) any decision making regarding the advertising strategy of the 1990 Three Tenors video in the United States during 1998.

133. During the 1990s, and including 1998, PolyGram Group Distribution, Inc. was one of the entities responsible for (1) any decision making regarding the wholesale price of the 1990 Three Tenors album in the United States; (2 any decision making regarding the wholesale price of the 1990 Three Tenors album in the United States; (3) any decision making regarding the advertising strategy for the 1990 Three Tenors album in the United States; and (4) any decision making regarding the advertising strategy of the 1990 Three Tenors video in the United States during 1998.

134. In 1998, the 1990 Three Tenors album was distributed and sold in the United States by PolyGram Group Distribution, Inc.

135. In 1998, PolyGram Group Distribution, Inc distributed recorded music and videos to retailers in each of the fifty states and in the District of Columbia, and it maintained a warehouse facility in Indiana from which it distributed recorded music and videos.

136. In the United States, the 1998 Three Tenors album was the third-best selling classical album of calendar year 1998.

137. Universal Music Group entities have entered into recording agreements with artists that authorized Universal to distribute an album in a territory smaller than the whole world.

138. During 1998, in connection with the release of the 1998 Three Tenors album, in some territories, some retailers were provided with point of sale displays in the shape of the Eiffel Tower which were designed to hold a limited number of compact discs.

139. In October 2000, Sony Classical released an album derived from a performance of the Three Tenors in Vienna, and this album is entitled *The Three Tenors Christmas* and consists of Christmas songs from around the world.

140. On or about August 10, 1998, the document marked RX74 was sent from Anthony O'Brien to Paul Saintilan.

141. Complaint Counsel have elected to forego any challenge to the proposed moratorium under the full rule of reason, provided that the term "full rule of reason" is understood to refer to that mode of antitrust analysis that involves, inter alia, formal definition of the boundaries of the relevant market coupled with an assessment of Respondents' market power.

142. Operating companies affiliated with PolyGram use temporary reductions in price level as a strategy to increase sales levels of albums in various territories, including the United Kingdom, Spain, France and Germany.

143. PolyGram permitted certain of its operating companies to promote the 1990 Three Tenors album aggressively between June 1, 1998 and July 24, 1998.

144. The document marked as CX 406 was sent to PolyGram's operating companies on or about April 10, 1998. The document marked as CX 408 was sent to PolyGram's operating companies on or about April 21, 1998. The document marked as CX 413 was was sent to PolyGram's operating companies on or about April 29, 1998. The document marked as UMG00208 (JX4) was sent to PolyGram's operating companies on or about July 14, 1998. The document marked as RX68 was sent to PolyGram's operating companies on or about July 30, 1998.

145. Complaint counsel will stipulate that the documents within RX72 labeled UMG SK 0019-24 were sent to the addressees listed on page UMG SK 0019 by Paul Robinson, an attorney for Warner.

146. During September 1998, PolyGram's Spanish operating company was authorized by PolyGram to permit customers that purchased 3T3 to place a single order for 3T1 at mid-price.

147. During September 1998, PolyGram's Spanish operating company permitted customers that purchased 3T3 to place a single order for 3T1 at mid-price.

148. Both PolyGram and Warner distribute their products through a network of operating companies, or "opcos"- subsidiaries responsible for sales within a particular country.

149. 3T2 was produced and marketed by Warner without any agreement between Polygram and Warner concerning Polygram's pricing or marketing of 3T1.

150. From 1994 through 1998, Alain Levy was the President of PolyGram Records.

## III. Stipulations of Law

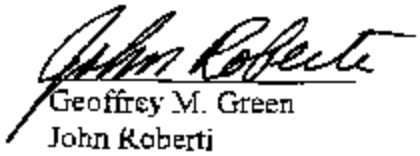
1. To prove a Sherman Act Section 1 violation, the plaintiff must prove the following elements by a preponderance of the evidence:

   (a) The existence of a contract, combination or conspiracy among two or more separate entities;

   (b) That unreasonably restrains trade; and

   (c) Affects interstate or foreign commerce.

Respectfully submitted,



Geoffrey M. Green
John Roberti
Melissa Westman-Cherry

*Complaint Counsel*

Glenn D. Pomerantz
Bradley S. Phillips
Stephen E. Morrisey
Munger Tolles & Olson LLP
355 South Grand Avenue
35th Floor
Los Angeles, Ca 90071

*Counsel for Respondents*

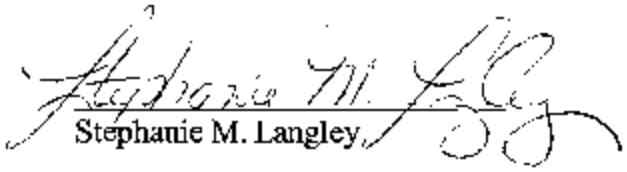
Dated: February 20, 2002

## CERTIFICATE OF SERVICE

I, Stephanie M. Langley, hereby certify that on February 21, 2002, I caused a copy of The Parties' First Set of Stipulations to be served upon the persons listed below by facsimile, U. S. Mail or Hand-Carried:

The Honorable James P. Timony
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room 112
Washington, DC 20580

Glenn D. Pomerantz
Bradley S. Phillips
Stephen E. Morrisey
Munger Tolles & Olson LLP
355 South Grand Avenue
35th Floor
Los Angeles, Ca 90071
Fax: (213) 687-3702
*Counsel for Respondents*



Stephanie M. Langley