

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is entered into on February 11, 2002, by and between Karen DeLise ("DeLise"), individually and on behalf of the GENERAL PUBLIC OF THE STATE OF CALIFORNIA (together "Plaintiffs"), and FAHRENHEIT ENTERTAINMENT INC., a Florida Corporation ("Fahrenheit"), MUSIC CITY RECORDS ("Music City"), and SUNNCOMM, INC., a Nevada Corporation ("Sunncomm") ("the Defendants") (collectively, "the Parties").

I. PRELIMINARY STATEMENT.

A. **Parties.** The parties to this Settlement Agreement ("Agreement") are Karen DeLise, individually and on behalf of the GENERAL PUBLIC OF THE STATE OF CALIFORNIA ("Plaintiffs"), on the one hand, and FAHRENHEIT ENTERTAINMENT INC., a Florida Corporation ("Fahrenheit"), MUSIC CITY RECORDS ("Music City"), , and SUNNCOMM, INC. ("Sunncomm"), a Nevada Corporation ("the Defendants") on the other hand (collectively, "the Parties").

B. Recitals.

WHEREAS, there is now pending before the Superior Court of the State of California, County of Marin, an action entitled KAREN DELISE et al v. FAHRENHEIT ENTERTAINMENT INC., et al., Case No. CV 014297 ("the Action"); and

WHEREAS, SUNNCOMM moved to dismiss the Complaint for lack of personal jurisdiction and Plaintiffs vigorously disagree with and oppose such motion on the basis that SUNNCOMM has substantial contacts with California and directly caused injury in California and such motion was not heard by the Court; and

WHEREAS, The Parties desire to resolve this dispute, the Action, and the claims and controversies existing or arising among or between them that are alleged in the Action. For that reason, they have entered into this Settlement Agreement.

NOW THEREFORE, for good and valuable consideration, including the mutual covenants herein contained, it is agreed as follows:

II. DISPOSITION OF THE ACTION.

In consideration for the promises and obligations set forth in this Agreement, the parties agree as follows:

A. **Warranty.** Sunncomm, Music City, and Fahrenheit agree that it shall take all steps necessary to carry out the terms of this agreement. Defendants warrant that they have the means, ability, licenses, and rights to carry out all the terms of this settlement agreement.

B. **Defendant's Actions.** Defendants agree to take the following actions in the United States, including the State of California,:

- a. **Spaceshifting and Notice of Minimum System Requirements:** Defendants, and each of them, shall, so long as they maintain Sunncomm or similar "cloque" technology on the "Charlie Pride CD", within 30 days of the date of this agreement include notice on the packaging of the Charlie Pride CD entitled "Charley Pride — a Tribute to Jim Reeves." ("Charlie Pride CD"), via sticker or otherwise, on all such CDs within the possession of Defendants and/or their wholesaler(s), language which clearly and accurately defines the CD playing devices, computer and software minimum system requirements, and digital music playing devices which are compatible with the Charlie Pride CD and related downloadable encrypted digital music files. The language shall include:
- i. a warning that the Charlie Pride CD is not designed to work in DVD players or Computer CD-ROM players;
 - ii. a warning of the minimum system requirements for playing the downloadable encrypted digital music files on a computer, including Microsoft Windows 98 and above and Microsoft Windows Media Player 7.0 and above and access to the Internet;
 - iii. a warning that the Charlie Pride CD and encrypted digital music file downloads are not compatible with MP3 rippers and players and are not compatible with MP3 electronic playing devices;
 - iv. a notice to visit a web page with a simple URL for an updated list of known compatibility problems related to computers, CD players, and digital music playing devices;
 - v. a warning that the downloadable encrypted digital music files of the songs contained on the Charlie Pride CD may only be downloaded six times.
- b. **Privacy and Anonymity of Listening and Downloads:** Defendants shall immediately ensure that any and all Internet music file downloads and listening of the music contained or arising out of said Charlie Pride CD are always anonymous and personal identifying information including, but not limited to, e-mail address and IP addresses shall not be required nor obtained as a condition of downloading (including file downloads from sunncomm.com) or playing or listening to the CD or music files, thereby protecting consumer privacy. Defendants shall immediately purge all personal identifying information (including e-mail addresses and IP addresses) obtained via the music file downloading process to date, and to immediately provide written confirmation to Plaintiff's counsel - via declaration - of such purging within 30 days of this agreement. Defendants shall amend their privacy policy(s) to advise consumers that all Internet file downloads of the music contained on the Charlie Pride CD are anonymous. Defendants shall clearly, accurately and prominently indicate the above "anonymity" policy on Defendants' web sites and such policy shall be prominently displayed to consumers prior to digital music file downloads.
- c. **First Sale/Downloads:** Defendants shall not impair or limit in any manner the ability and right of consumers to lawfully sell or transfer ownership of

the Charlie Pride CD to others who shall have the equal ability to download related digital music files.

- d. **Return Policy:** Defendants shall immediately begin accepting returns (postage paid by Defendants) for money from any consumer not satisfied with the Charlie Pride CD due to problems with playability on their CD player, computer CD player, or electronic or portable playing device. Defendants shall immediately - clearly, accurately and prominently indicate the return policy, via sticker or otherwise, inside the Charlie Pride CD packaging and via HTML or equivalent text on the front page of Defendants' web sites. Defendants shall take reasonable actions and act in good faith to have Defendants' resellers accept and process such returns indicated above. Consumers who purchased the Charlie Pride CD prior to the effectuation of this agreement shall be permitted to return the Charlie Pride CD for one year from the date of purchase; all other consumers shall be permitted to return the CD within thirty days of purchase. *WITH PROPER STORE RECEIPT.*
- a. **Attorney Fees and Costs:** DeLise and Defendants agree that simultaneous with Defendants signing this Agreement, Defendants shall forward to DeLise (via DeLise's counsel of record, Ira P. Rothken, Esq.) via wire transfer or valid cashier's check (via Fedex) the sum of Ten Thousand Dollars (\$10,000.00) in connection therewith for attorney fees and costs (to be divided one third per defendant). Other than the amounts described above, each party shall bear their own attorneys fees and costs. Defendants shall bear their own attorneys' fees and costs.

III. LIMITED MUTUAL RELEASE.

Scope of Limited Mutual Release. Except as to the rights and obligations of the parties set forth under this Agreement (including, without limitation, Paragraph II above), for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, DeLise, on the one hand, and Defendants, on the other hand, on behalf of themselves and, as applicable, each of their subsidiaries and each of their respective officers, employees, directors, shareholders, partners, agents, attorneys, insurers, accountants, heirs, executors, administrators, conservators, and successors and assigns (the "Releasing Parties"), hereby, to the fullest extent permitted by law, fully and forever release and discharge one another and, as applicable, each of the other's subsidiaries, and affiliates, and each of their respective officers, employees, directors, shareholders, partners, agents, attorneys, insurers, accountants, heirs, executors, administrators, conservators, and successors and assigns (collectively, the "Releasees") from and with respect to any and all claims, counter-claims, third party claims, demands, liens, actions, suits, causes of action, obligations, controversies, debts, costs, attorneys' fees, expenses, damages, judgments, orders, and liabilities of whatever kind or nature at law, in equity, or otherwise, whether now known or unknown, suspected or unsuspected, and whether or not concealed or hidden, which have existed or may have existed, or which do exist or which hereafter can, shall or may exist, based on any facts, events, or omissions occurring from the beginning of time to the date hereof pertaining to or arising out of: (1) the matters and claims alleged or otherwise put at issue in the Actions, and (2) the filing and prosecution of the Actions, including any media coverage, press releases, or comments to the media

regarding the Actions or relating to the matters and claims alleged or otherwise put at issue in the Actions. Subject to IV(B) below the parties shall take reasonable steps to dismiss the action with prejudice.

A. **Waiver of Other Claims.** The Releasing Parties acknowledge that there is a possibility that subsequent to the execution of this Agreement, they will discover facts or incur or suffer claims pertaining to the matters released in the foregoing paragraph which were unknown or unsuspected at the time this Agreement was executed, and which if known by them at that time may have materially affected their decision to execute this Agreement. The Releasing Parties acknowledge and agree that by reason of this Agreement, and the release contained in the preceding paragraph, they are assuming any risk of such unknown facts and such unknown and unsuspected claims. The Releasing Parties have been advised of the existence of Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Notwithstanding such provisions, this release shall constitute a full release in accordance with its terms. The Releasing Parties knowingly and voluntarily WAIVE the provisions of Section 1542, as well as any other statute, law, or rule of similar effect, and acknowledge and agree that this waiver is an essential and material term of this release and the settlement which leads to it, and without such waiver the settlement would not have been accepted. This waiver includes, but is not limited to, a waiver of the right to a claim of fraudulent inducement to enter into this Agreement as to such unknown facts and such unknown and unsuspected claims, except that it shall not include misrepresentations as to the representations and warranties contained within this Agreement. The Releasing Parties hereby represent that they have been advised by their legal counsel, and that they understand and acknowledge the significance and consequence of this release and of this specific waiver of Section 1542 and other such laws of other jurisdictions.

B. **Fahrenheit and Music City Stipulate to Personal Jurisdiction in California.** Fahrenheit and Music City hereby stipulate to Personal Jurisdiction and venue in Marin County, California and expressly subject themselves to the jurisdiction of the Marin County Superior Court for all purposes related to the Action, the claims made in the Action, and effectuation and enforcement of the settlement agreement.

IV. ADDITIONAL AND MISCELLANEOUS PROVISIONS.

A. **Settlement.** The parties hereto agree that this Agreement, and all such related documents, are the result, and a part, of a compromise within the provisions of California Evidence Code sections 1152 and 1154. In entering into this Agreement, the parties do not admit liability to each other.

B. **Additional Documentation, Enforcement, and Further Cooperation.** The parties agree to execute such additional documentation necessary to effectuate the terms and purposes of this Agreement without charge or other consideration. The Marin County Superior

Court, including the Judge assigned to the instant Action, shall retain jurisdiction of the Action under CCP 664.6 to carry out the terms of this agreement.

C. Integration And Representations.

1. This document constitutes the entire agreement and understanding between the parties concerning the resolution of the Action and the releases and dismissals described herein. This document supersedes and replaces all prior negotiations, proposed agreements, and agreements, written and oral, relating thereto. This is a fully integrated document in connection with this Agreement, Plaintiffs and Defendants have not assumed any obligations to anyone not a party to this Agreement, except as expressly set forth in this Agreement.

2. Each party hereto acknowledges that no other party hereto, or any agent or attorney of any other party hereto, has made any promise, representation or warranty whatever, express or implied, not contained herein concerning the subject matter hereof, to induce it to execute this document, and acknowledges that it has not executed this instrument in reliance on any such promise, representation, or warranty not contained herein.

3. Each of the parties hereto represents that it has read this Agreement, has consulted with their own counsel before signing it, and understands the contents thereof.

4. Each of the parties hereto acknowledges and represents to the other party that each has not assigned or transferred any claim covered by this Agreement that any party has, had, may have, or may have had against any other. The Defendants expressly warrant, through their respective officers signing this agreement, that they have the means and resources to carry out the terms of this Agreement

D. Governing Law/Enforcement. All questions with respect to the construction of this Agreement and the rights and liabilities hereunder shall be governed by the laws of the State of California in effect as of the date hereof., If a Court finds that any of the Defendants have violated this agreement then amongst other remedies, the Court shall order the offending Defendant(s) to pay Plaintiffs via their counsel reasonable attorneys fees and costs arising out of or related to such enforcement proceedings.

E. Notices. Any notices required under this Agreement shall be delivered in writing, by facsimile or e-mail, with a copy sent by United States Postal Service, first-class service (return receipt requested) or via Fedex to the following addresses (each recipient shall notify the others if the information changes or if others are to receive notice):

Plaintiffs:

Ira Rothken, Esq.
Rothken Law Firm
1050 Northgate Drive, Suite 520
San Rafael, California 94903
Phone: (415) 924-4250
Fax: (415) 924-2905

Defendants:

Suncomm, Inc.:

Kurt L. Micklow, Esq.
Banning Micklow et al LLP
100 Spear St #1850
San Francisco, CA 94105 1528
Tel No.: (415)399-9191
Fax No.: (415)399-9192

Music City Records:

Registered Agent, Robert Heatherly
7928 River Fork Drive
Nashville, TN, 37221
Tel: 615-269-3100

Fahrenheit Entertainment, Inc.:

Peter Trimarco, President
10200 E. Girard Avenue, Building C, #255
Denver, CO, 80231
Tel: 303-745-6252

F. **Headings.** Section and paragraph headings contained in this Agreement are for convenience and shall not be considered for any purpose in construing this Agreement.

G. **Execution By Fax and In Counterparts.** This Agreement may be executed by fax and in any number of counterparts, which together shall constitute one instrument.

H. **Predecessors, Successors and Assigns.** This Agreement shall bind and inure to the benefit only of the parties hereto and their respective successors, assigns, licensees, and distributors (and their respective predecessors to the fullest extent permitted by law). Notwithstanding the foregoing, this Agreement is not intended to inure to the benefit of any third parties, except as such third parties are specifically identified herein and only to the extent specifically provided herein.

I. **Amendments.** This Agreement may be amended, modified, canceled, or waived only by written instrument executed by each of the parties.

J. **Unenforceable Terms.** If any provision of this Agreement is adjudicated to be unenforceable or invalid for any reason, that part will be severed from the balance of this

Agreement, and the validity and enforceability of the remainder of this Agreement will in no way be affected or impaired unless the severed portion was essential to the intended purpose of this Agreement. If the severed portion was essential to the intended purpose of this Agreement, then the party who was to receive the benefit of the severed portion has the option to void this Agreement. The parties expressly agree that Sections II and III are essential to the intended purpose of this Agreement.

K. **No Rescission.** Under no circumstances, regardless of whether any party has breached or allegedly breached this Agreement, shall this Agreement be subject to termination, rescission, or cancellation.

L. **Waiver of Terms.** A waiver of any term or condition of this Agreement will not be deemed to be, and may not be construed as, a waiver of any other term or condition hereof.

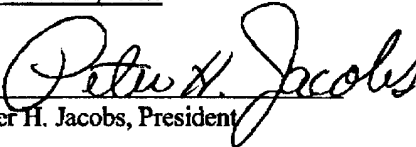
M. **Neutral Construction.** Each party has cooperated in the drafting and preparation of this Agreement and has had the Agreement reviewed by their own Counsel. Hence, this Agreement will be construed neutrally, and will not be applied more strictly against one party than another.

IN WITNESS WHEREOF, the parties have executed this Agreement as of ^{2/21/02} ~~December 27,~~
~~2001.~~

Fahrenheit Entertainment, Inc.:

By _____
Peter Trimarco, President

Sunncomm, Inc.:

By 
Peter H. Jacobs, President

Music City Records:

By _____
Robert Heatherly, President

Karen DeLise:

By _____
Karen DeLise

Approved as to form:

KURT L. MICKLOW, ESQ.
BANNING MICKLOW ET AL LLP

Approved as to form:

IRA ROTHKEN, ESQ.
ROTHKEN LAW FIRM

By _____
Kurt L. Micklow
Attorneys for SunnComm, Inc.

By _____
Ira P. Rothken
Attorneys for Plaintiffs



Agreement, and the validity and enforceability of the remainder of this Agreement will in no way be affected or impaired unless the severed portion was essential to the intended purpose of this Agreement. If the severed portion was essential to the intended purpose of this Agreement, then the party who was to receive the benefit of the severed portion has the option to void this Agreement. The parties expressly agree that Sections II and III are essential to the intended purpose of this Agreement.

K. **No Rescission.** Under no circumstances, regardless of whether any party has breached or allegedly breached this Agreement, shall this Agreement be subject to termination, rescission, or cancellation.

L. **Waiver of Terms.** A waiver of any term or condition of this Agreement will not be deemed to be, and may not be construed as, a waiver of any other term or condition hereof.

M. **Neutral Construction.** Each party has cooperated in the drafting and preparation of this Agreement and has had the Agreement reviewed by their own Counsel. Hence, this Agreement will be construed neutrally, and will not be applied more strictly against one party than another.

IN WITNESS WHEREOF, the parties have executed this Agreement as of ^{2/21/02} ~~December 27,~~ 2001.

Fahrenheit Entertainment, Inc.:

By _____
Peter Trimarco, President

Sunncomm, Inc.:

By _____
Peter H. Jacobs, President

Music City Records:

By Robert Heatherly
Robert Heatherly, President

Karen DeLise:

By _____
Karen DeLise

Approved as to form:

KURT L. MICKLOW, ESQ.
BANNING MICKLOW ET AL LLP

Approved as to form:

IRA ROTHKEN, ESQ.
ROTHKEN LAW FIRM

By _____
Kurt L. Micklow
Attorneys for SunnComm, Inc.

By _____
Ira P. Rothken
Attorneys for Plaintiffs

Agreement, and the validity and enforceability of the remainder of this Agreement will in no way be affected or impaired unless the severed portion was essential to the intended purpose of this Agreement. If the severed portion was essential to the intended purpose of this Agreement, then the party who was to receive the benefit of the severed portion has the option to void this Agreement. The parties expressly agree that Sections II and III are essential to the intended purpose of this Agreement.

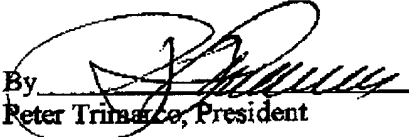
K. **No Rescission.** Under no circumstances, regardless of whether any party has breached or allegedly breached this Agreement, shall this Agreement be subject to termination, rescission, or cancellation.

L. **Waiver of Terms.** A waiver of any term or condition of this Agreement will not be deemed to be, and may not be construed as, a waiver of any other term or condition hereof.

M. **Neutral Construction.** Each party has cooperated in the drafting and preparation of this Agreement and has had the Agreement reviewed by their own Counsel. Hence, this Agreement will be construed neutrally, and will not be applied more strictly against one party than another.

IN WITNESS WHEREOF, the parties have executed this Agreement as of ^{2/21/02} ~~December 27,~~
~~2001.~~

Fahrenheit Entertainment, Inc.:

By 
Peter Trina, President

Sunncomm, Inc.:

By _____
Peter H. Jacobs, President

Music City Records:

By _____
Robert Heatherly, President

Karen DeLise:

By _____
Karen DeLise

Approved as to form:

KURT L. MICKLOW, ESQ.
BANNING MICKLOW ET AL LLP

Approved as to form:

IRA ROTHKEN, ESQ.
ROTHKEN LAW FIRM

By _____
Kurt L. Micklow
Attorneys for SunnComm, Inc.

By _____
Ira P. Rothken
Attorneys for Plaintiffs

Agreement, and the validity and enforceability of the remainder of this Agreement will in no way be affected or impaired unless the severed portion was essential to the intended purpose of this Agreement. If the severed portion was essential to the intended purpose of this Agreement, then the party who was to receive the benefit of the severed portion has the option to void this Agreement. The parties expressly agree that Sections II and III are essential to the intended purpose of this Agreement.

K. **No Rescission.** Under no circumstances, regardless of whether any party has breached or allegedly breached this Agreement, shall this Agreement be subject to termination, rescission, or cancellation.

L. **Waiver of Terms.** A waiver of any term or condition of this Agreement will not be deemed to be, and may not be construed as, a waiver of any other term or condition hereof.

M. **Neutral Construction.** Each party has cooperated in the drafting and preparation of this Agreement and has had the Agreement reviewed by their own Counsel. Hence, this Agreement will be construed neutrally, and will not be applied more strictly against one party than another.

IN WITNESS WHEREOF, the parties have executed this Agreement as of ^{2/21/02} ~~December 27,~~ 2001.

Fahrenheit Entertainment, Inc.:

By _____
Peter Trimarco, President

Music City Records:

By _____
Robert Heatherly, President

Approved as to form:


KURT L. MICKLOW, ESQ.
BANNING MICKLOW ET AL LLP

By _____
Kurt L. Micklow
Attorneys for SunnComm, Inc.

Sunncomm, Inc.:

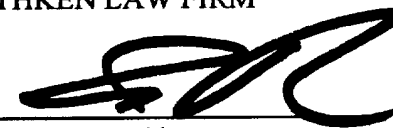
By _____
Peter H. Jacobs, President

Karen DeLise:

By 
Karen DeLise

Approved as to form:

IRA ROTHKEN, ESQ.
ROTHKEN LAW FIRM

By 
Ira P. Rothken
Attorneys for Plaintiffs