

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROWE ENTERTAINMENT, INC., LEONARD
ROWE, BAB PRODUCTIONS, INC., BERNARD
BAILEY, SUN SONG PRODUCTIONS, INC.,
JESSE BOSEMAN, SUMMITT MANAGEMENT
CORPORATION, FRED JONES, JR., LEE KING
PRODUCTIONS, INC. and LEE KING,

Plaintiffs, ^a

-against-

THE WILLIAM MORRIS AGENCY, INC.,
CREATIVE ARTISTS AGENCY, LLC, AGENCY
FOR THE PERFORMING ARTS, INC.,
MONTEREY PENINSULA ARTISTS,
QBQ ENTERTAINMENT,
HOWARD ROSE AGENCY LTD., RENAISSANCE
ENTERTAINMENT INC., VARIETY ARTISTS
INTERNATIONAL, INC., BEAVER
PRODUCTIONS INC., BELKIN PRODUCTIONS,
INC., BILL GRAHAM ENTERPRISES, INC.,
THE CELLAR DOOR COMPANIES, INC.,
CELLAR DOOR CONCERTS OF CAROLINAS,
INC., CELLAR DOOR CONCERTS OF FLORIDA,
INC., CELLAR DOOR PRODUCTIONS OF
MICHIGAN INC., CELLAR DOOR NORTH
CENTRAL, INC., CELLAR DOOR PRODUCTIONS
INC., CELLAR DOOR PRODUCTIONS OF D.C.,
INC., CELLAR DOOR (SOUTHERN) CORPORATION,
CELLAR DOOR ENTERTAINMENT, INC.,
CONCERT/SOUTHERN PROMOTIONS, INC.,
CONTEMPORARY PRODUCTIONS INC.,
DELSENER/SLATER ENTERPRISES, LTD.,
DICESARE-ENGLER, INC., DON LAW COMPANY,
INC., ELECTRIC FACTORY CONCERTS, INC.,
EVENING STAR PRODUCTIONS, INC.,
FANTASMA PRODUCTIONS OF FLORIDA, INC.,
JAM PRODUCTIONS LTD.,
MAGICWORKS CONCERTS, INC.,
PACE CONCERTS, INC.,
SFX ENTERTAINMENT INC., SUNSHINE
PROMOTIONS INC., and WJS III, INC.,

Defendants.

98 Civ. 8272 (RPP)

AMENDED COMPLAINT

JURY TRIAL DEMANDED

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Plaintiffs, by their attorneys, Rubin Baum Levin Constant & Friedman, for their amended complaint, allege upon knowledge as to their own acts and upon information and belief as to the acts of all others, as follows:

I. NATURE OF THE CASE

1. This is an action brought to redress violations of antitrust and civil rights laws in connection with the promotion of live concert performances throughout the United States of pop, rock and urban music ("contemporary music") (hereinafter referred to as "concerts" or "contemporary music concerts"). The five corporate plaintiffs are all engaged in the business of promoting concerts. All are owned and operated by black persons who are the five individual plaintiffs. During the last several years, plaintiffs have accounted for most of the business done by black concert promoters within the United States. Because of an all-white concert promotion fraternity, the black concert promoters are systematically excluded from the promotion of concerts given by white performers. No black promoter, including plaintiffs, has been able to contract to promote a contemporary music concert given by a white artist, or even been given the opportunity to bid on such promotion. In addition, plaintiffs are regularly excluded from the promotion of concerts given by top-drawing black performers.

2. Eight of the defendants are talent and booking agencies, each of which does business throughout the United States (the "booking agency defendants"). The booking agency defendants, which are all controlled by white persons, represent performers in booking concerts. They engage promoters to promote concerts in the particular geographic areas in which concerts are to be presented. The selection of each promoter is within the discretion of the agent.

3. The remaining defendants are concert promoters, each of which is controlled by white persons (the "promoter defendants").

4. Plaintiffs are skilled, experienced and financially sound concert promoters. They are regularly retained by booking agents, including booking agency defendants named herein, to promote concerts throughout the United States, including concerts performed at the largest and most important theaters, concert halls, arenas and stadiums ("venues") -- but not to promote concerts to be given by white performers. The booking agency defendants refer their promotion business of white acts exclusively to white promoters, predominantly to the promoter defendants. In addition, plaintiffs are often excluded from promoting concerts given by the most popular black artists. The booking agent defendants regularly retain the promoter defendants to promote such concerts, despite the fact that plaintiffs may have successfully promoted concerts given by the same artists before they achieved star status.

5. This arrangement, by which plaintiffs are excluded from promoting concerts given by all white performers and the most popular black performers, is the product of an illegal conspiracy among the defendants and others to boycott and exclude plaintiffs and to discriminate against them on the basis of race, all in violation of Section 1 of the Sherman Antitrust Act (15 U.S.C. §1), and the Civil Rights Acts of 1866 and of 1991 (42 U.S.C. §§1981, et seq.).

6. The entrenched racism and exclusionary practices in the concert promotion industry which this lawsuit seeks to remedy are a repulsive vestige of another era. Over the years, plaintiffs have urged defendants and others in the music industry to abrogate these practices and open the industry to free competition to all persons regardless of race. All of their supplications have been ignored or rejected. Plaintiffs have suffered substantial antitrust injury

and enormous personal and professional losses occasioned by racial discrimination which they seek to redress in this action.

7. The conspiracy alleged herein virtually eliminates competition among concert promoters, including among the promoter defendants, and makes it extremely difficult, if not altogether impossible, for new businesses to enter the concert promotion industry. Enhanced competition and greater ease of entry to the concert promotion industry would lower prices and benefit artists and the public.

8. The conspiracy alleged herein also diminishes competition among booking agents, and makes entry into the booking agency business more difficult, because booking agents are able to direct top selling acts to a particular concert promoter in each locality who need not compete for the business. The enormous profits thus realized by concert promoters on such shows are far greater than they would be if plaintiffs were permitted to submit competitive bids. Because the booking agency defendants are able to direct such profits to the concert promoter defendants, the concert promoter defendants do not refuse to promote less popular acts at little or no profit when requested to do so by the booking agency defendants. Accordingly, the booking agency defendants are able to assure all talent that they are able to obtain concert dates for them on terms and conditions which would not be available in a free market, thus making it extremely difficult for new persons to gain entry into the booking agency business.

9. The conspiracy alleged herein also causes severe injury to the black business community because the promoter defendants rarely, if ever, retain the services of black-owned businesses, such as caterers, transportation providers and security services, to service concerts, all of which has a negative ripple effect throughout the black community.

II. JURISDICTION

10. This Court's subject matter jurisdiction is invoked under 28 U.S.C. §§1331, 1337(a), and 1343, and 15 U.S.C. §§15 and 26. Plaintiffs bring this action for compensatory and treble damages and injunctive relief for violations of Section 1 of the Sherman Antitrust Act, 15 U.S.C. §1; and for compensatory and punitive damages and injunctive relief under the Civil Rights Acts of 1866 and 1991, 42 U.S.C. §§1981, 1985(3) and 1986.

III. VENUE

11. Venue is proper in this judicial district pursuant to 15 U.S.C. §§15 and 22 and 28 U.S.C. §1391(b) because all defendants are found or transact business in this district, because a substantial part of the events or omissions giving rise to the claims occurred in this district, and because all defendants joined the conspiracy alleged herein knowing that it would cause damage within this district.

IV. PLAINTIFFS

12. Plaintiff Rowe Entertainment, Inc. ("Rowe Entertainment") is a corporation organized and existing under the laws of the State of Georgia with its principal place of business in Atlanta, Georgia. Rowe Entertainment is a concert promotion company which has operated nationwide for many years. Rowe Entertainment has promoted concerts by black acts throughout the United States. Plaintiff Leonard Rowe, a black, is the sole shareholder, and president of Rowe Entertainment. He has been a concert promoter for over twenty years. Leonard Rowe and

Rowe Entertainment have been solicited by and have contracted with booking agency defendants The William Morris Agency, Inc. ("William Morris"), Creative Artists Agency, Inc. ("CAA"), and QBQ Entertainment ("QBQ"), and with other booking agencies not named as defendants in this action, and have promoted concerts performed by artists represented by each of said booking agency defendants pursuant to such contracts. In addition, Leonard Rowe has had numerous conversations with Howard Rose, chief executive officer of defendant Howard Rose Agency Ltd. ("Rose Agency"), in an unsuccessful effort to contract with Rose Agency to promote concerts to be given by artists represented by said agency. Leonard Rowe and Rowe Entertainment are well known to these and the other booking agency defendants, and to mostly all persons in the concert promotion business, as skilled and financially responsible promoters capable of promoting any concert. However, no booking agency has ever contracted with them to promote a contemporary music concert to be performed by a white artist, or has ever permitted them to even bid for such promotions.

13. Plaintiff BAB Productions, Inc. ("BAB Productions") is a corporation organized and existing under the laws of the State of North Carolina, with its principal place of business in Charlotte, North Carolina. BAB Productions is a full-service entertainment organization and concert promotion company. It operates primarily in North Carolina and South Carolina, promoting concerts by black artists. Plaintiff Bernard Bailey, a black, is the sole shareholder and president of BAB Productions. Bernard Bailey and BAB Productions have been solicited by and contracted with booking agency defendants William Morris, Agency for the Performing Arts, Inc. ("APA"), and Variety Artists International Inc. ("Variety Artists"), and with other booking agencies not named as defendants in this action, and have promoted concerts performed by artists

represented by each of said booking agency defendants pursuant to such contracts. In addition, Bernard Bailey has communicated with Dan Weiner, an agent employed by Monterey Peninsula Artists, Inc. ("Monterey") in an effort to contract with Monterey to promote concerts to be given by artists represented by said agency. Bernard Bailey and BAB Productions are well known to these and other booking agency defendants, and to numerous other persons in the concert promotion business, as skilled and financially responsible promoters capable of promoting any concert within North and South Carolina. However, no booking agency has ever contracted with them to promote a contemporary music concert to be given by a white artist, or has ever permitted them to even bid for such promotions.

14. Plaintiff Sun Song Productions, Inc. ("Sun Song") is a corporation organized and existing under the laws of the State of New York, with its principal place of business in New York, New York. Sun Song Productions is a concert promotion company operating in New York and along the East Coast of the United States since 1976. Plaintiff Jesse Boseman, a black, is the sole shareholder and chief executive of Sun Song Productions. Jesse Boseman and Sun Song have been solicited by and contracted with booking agency defendant William Morris, and with other booking agencies not named as defendants in this action, and have promoted concerts performed by artists represented by William Morris pursuant to such contracts. In addition, Jesse Boseman and Sun Song have communicated with CAA, seeking to promote concerts to be given by artists represented by said agency. Jesse Boseman and Sun Song are well known to these and other booking agency defendants and to numerous other persons throughout the concert promotion business, as skilled and financially responsible promoters capable of promoting any concert within the New York Metropolitan area. However, no booking agency has ever

contracted with them to promote a contemporary music concert to be given by a white artist, or has ever permitted them to even bid for such promotions.

15. Plaintiff Summitt Management Corporation ("Summitt") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Memphis, Tennessee. Founded in 1984, Summitt is an entertainment, promotion and event management company which promotes concerts primarily in the Memphis metropolitan region. Plaintiff Fred Jones, Jr., a black, is the sole shareholder and president of Summitt. Fred Jones and Summitt have been solicited by and contracted with booking agency defendants William Morris and Renaissance Entertainment Inc. ("Renaissance"), and with other booking agencies not named as defendants in this action, and have promoted concerts performed by artists represented by each of said booking agency defendants pursuant to such contracts. In addition, Fred Jones and Summitt have communicated with booking agency defendants CAA, Rose Agency, Monterey, APA, and QBQ, concerning Memphis promotions. Fred Jones and Summitt are well known to these and other booking agency defendants, and to numerous other persons in the concert promotion business, as skilled and financially responsible promoters capable of promoting any concert within the area of Memphis, Tennessee. However, no booking agency has ever contracted with them to promote a contemporary music concert to be given by a white artist, or has ever permitted them to even bid for such promotions.

16. Plaintiff Lee King Productions, Inc. ("Lee King Productions") is a corporation organized and existing under the laws of the State of Mississippi, with its principal place of business in Jackson, Mississippi. Formed in 1976, Lee King Productions, which also does business under the trade name First Class Productions, is a concert promotion company operating

primarily in the Southern United States. Plaintiff Lee King, a black, is the sole shareholder and chief executive of Lee King Productions. Lee King and Lee King Productions have been solicited by and contracted with William Morris and with other booking agencies not named as defendants in this action, and have promoted concerts performed by artists represented by William Morris pursuant to such contracts. In addition, Lee King and Lee King Productions have communicated with CAA and Rose Agency seeking to promote concerts to be given by artists represented by said agencies. Lee King and Lee King Productions are well known to these and other booking agency defendants, and to numerous other persons in the concert promotion business, as skilled and financially responsible promoters capable of promoting any concert within the Southern United States. However, no booking agency has ever contracted with them to promote a contemporary music concert to be given by a white artist, or has ever permitted them to even bid for such promotions.

17. The Black Promoters Association of America, Inc. ("BPA") is a corporation organized and existing under the laws of the State of Georgia, with its offices located in Atlanta, Georgia. BPA is a trade association of black concert promoters, of which all plaintiffs are members. The purpose of BPA is to promote the interests of black concert promoters, to open the industry to free competition, and to eliminate racial discrimination.

V. DEFENDANTS

A. Booking Agency Defendants

18. Defendant William Morris is a corporation organized and existing under the laws of the State of New York, with its principal place of business in Beverly Hills, California, and a

major office in New York, New York. William Morris is one of the world's largest booking and talent agencies. Its principal officers are Richard Rosenberg and Peter Grosslight, both of whom know each of the plaintiffs. William Morris has engaged each of the plaintiffs to promote or co-promote concerts given by certain of their black acts. Agents or officers of William Morris who have communicated directly with, or engaged, plaintiffs to promote concerts include Jay Jacobs, Jeff Frasco, Dick Allen and Cara Lewis. William Morris has never contracted with, or solicited a bid from, any plaintiff or other black promoter to promote a concert of contemporary music performed by a white artist. Moreover, whenever a black act achieves the status of a major act, William Morris uses its best efforts to prevent any black promoter from promoting its concerts.

19. Defendant CAA is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Beverly Hills, California. CAA is a major booking and talent agency. All of the plaintiffs are known to Robert Light and Mike Piranian, principal employees at CAA responsible for concert tours. CAA contracted with plaintiffs for concerts to be performed by two star female black artists, Toni Braxton and Janet Jackson, as more fully set forth hereinafter. CAA has never solicited or permitted any black promoter, including plaintiffs, to promote, or even bid to promote a concert of contemporary music by a white act.

20. Defendant APA is a corporation organized and existing under the laws of the State of California, with its principal place of business in Los Angeles, California, and a major office in New York, New York. APA books major contemporary music acts. Plaintiff Bernard Bailey is known to APA and has promoted one or more minor acts represented by APA through its agents Mario Tirada and Nat Burgess. APA has never solicited or permitted any black

promoter, including plaintiffs, to promote, or even bid to promote, a concert of contemporary music by a white act.

21. Defendant Monterey is a corporation organized and existing under the laws of the State of California, with its principal place of business in Monterey, California. Monterey primarily books major white acts performing contemporary music. Plaintiff Bernard Bailey is known to Monterey and has often sought promotion business from its agent Dan Weiner. Plaintiff Fred Jones has also communicated with Monterey concerning promotions. Monterey has never solicited or permitted Bailey, Jones or any other black promoter to promote, or even bid to promote, a concert of contemporary music by a white act.

22. Defendant QBQ is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in New York, New York. QBQ books major acts. Its president, Dennis Arfa, formerly a William Morris officer, knows plaintiffs Rowe and Boseman, and others. QBQ contracted with Rowe, Rowe Entertainment, Boseman and Sun Song to co-promote two concerts given by Luther Vandross, a black artist, in or about 1997. Another principal agency employee of QBQ is Adam Kornfeld, formerly of William Morris, who has long known all of the plaintiffs. Except as set forth herein, QBQ has consistently refused and failed to do business with any plaintiff, and has never solicited or allowed any plaintiff or any other black promoter to promote, or even bid to promote, any concert of contemporary music by a white act.

23. Defendant Rose Agency is a corporation organized and existing under the laws of the State of California, with its principal place of business in Beverly Hills, California. Rose Agency books major acts of contemporary music. Howard Rose, chief executive of Rose

Agency, has known all the plaintiffs for many years and has consistently refused to do business with them, and has never solicited or permitted any plaintiff or other black promoter to promote, or even bid to promote, any concert of contemporary music by a white act.

24. Defendant Renaissance is a corporation organized and existing under the laws of the State of New York, with its principal place of business in New York, New York.

Renaissance books major acts of contemporary music. Its principals are Jon Podell, a former senior executive of William Morris, and David Zedeck, a former officer of Famous Artists, an agency which is not a defendant herein because it regularly engages plaintiffs to promote its black acts. Although Renaissance, through these officers, has known the plaintiffs since its inception, it has never solicited or permitted any plaintiff or other black promoter to promote, or even to bid to promote, any concert of contemporary music by a white act, and has never permitted any plaintiff or other black promoter to bid to promote a concert of contemporary music by a white act.

25. Defendant Variety Artists is a corporation organized and existing under the laws of the State of Minnesota, with its principal place of business in San Luis Obispo, California. Variety Artists primarily books white contemporary music acts. Variety Artists has known Bernard Bailey for several years and has contracted with him to promote minor artists. Variety Artists has never solicited or permitted any plaintiff or any other black promoter to promote, or even bid to promote, any concert of contemporary music given by a white artist, or permitted any black promoter to bid to promote such an act.

26. Defendants William Morris, CAA, APA, Monterey, QBQ, Rose Agency, Renaissance, and Variety Artists are collectively referred to hereinafter as the "booking agency defendants."

27. This Court has personal jurisdiction over each of the booking agency defendants because each does or transacts business within the State of New York, each contracts to supply services in the State of New York, and each joined the conspiracy alleged herein knowing that it would cause damage within the State of New York.

28. Booking agencies Premier Talent Agency, Inc., ARTISTdirect L.L.C., and Artists & Audience Entertainment are named herein as talent agent conspirators, but are not named as defendants herein.

B. Concert Promotion Defendants

29. Defendant Beaver Productions Inc. ("Beaver Productions") is a corporation organized and existing under the laws of the State of Louisiana, with its principal place of business in New Orleans, Louisiana. Beaver Productions is a major concert promoter functioning in the Southern United States, and has always been given the opportunity by the booking agency defendants of promoting concerts performed by both black and white acts of contemporary music.

30. Defendant Belkin Productions Inc. ("Belkin Productions") is a corporation organized and existing under the laws of the State of Ohio, with its principal place of business in Chagrin Falls, Ohio. Belkin Productions promotes concerts throughout the mid-western United States, is the predominant promoter in the State of Ohio, and has always been given the

opportunity by the booking agency defendants of promoting concerts performed by both black and white acts of contemporary music.

31. Defendant Bill Graham Enterprises, Inc. is a corporation organized and existing under the laws of the State of California, doing business as Bill Graham Presents ("BGP"), with its principal place of business in San Francisco, California. Bill Graham Enterprises is the predominant concert promoter in the San Francisco Bay/Northern California area. It has always been given the opportunity by the booking agency defendants of promoting concerts performed by both black and white acts of contemporary music. Defendant Bill Graham Enterprises, Inc. has been recently acquired by defendant SFX Entertainment, Inc. ("SFX").

32. Defendant The Cellar Door Companies, Inc. ("Cellar Door") is a corporation organized and existing under the laws of the State of Florida, with its principal place of business in Ft. Lauderdale, Florida. The chief executive of Cellar Door is Jack Boyle. Cellar Door is a promoter of concerts and operates in more than two dozen markets throughout the United States by way of its regional wholly owned companies, hereinafter described. Cellar Door has always been given the opportunity by the booking agency defendants of promoting concerts performed by both black and white acts of contemporary music. The Cellar Door Companies, Inc. has been recently acquired by SFX .

33. Defendant Cellar Door Concerts of Carolinas Inc. is a corporation organized and existing under the laws of the State of North Carolina, with its principal place of business in Columbia, South Carolina. Cellar Door Concerts of the Carolinas Inc. is a regional office of the defendant Cellar Door, and promotes concerts in North Carolina and South Carolina, and has always been given the opportunity by the booking agency defendants of promoting concerts

performed by both black and white acts of contemporary music. Cellar Door Concerts of the Carolinas Inc. has been recently acquired by SFX.

34. Defendant Cellar Door Concerts of Florida Inc. is a corporation organized and existing under the laws of the State of Florida, with its principal place of business in Fort Lauderdale, Florida. Cellar Door Concerts of Florida Inc. promotes concerts in Southern Florida, and has always been given the opportunity by the booking agency defendants of promoting concerts performed by both black and white acts of contemporary music. Cellar Door Concerts of Florida Inc. has been recently acquired by SFX.

35. Defendant Cellar Door Productions of Michigan Inc. is a corporation organized and existing under the laws of the State of Michigan, with its principal place of business in Northville, Michigan. Cellar Door Productions of Michigan Inc. is a concert promoter in the Detroit metropolitan area, and has always been given the opportunity by the booking agency defendants of promoting concerts performed by both black and white acts of contemporary music. Cellar Door Productions of Michigan Inc. has been recently acquired by SFX.

36. Defendant Cellar Door North Central, Inc. is a corporation organized and existing under the laws of the State of Wisconsin, with its principal place of business in Milwaukee, Wisconsin. Cellar Door North Central promotes concerts in Wisconsin, Minnesota and Illinois, and has always been given the opportunity by the booking agency defendants of promoting concerts performed by both black and white acts of contemporary music. Cellar Door North Central, Inc. has been recently acquired by SFX.

37. Defendant Cellar Door Productions Inc. is a corporation organized and existing under the laws of the Commonwealth of Virginia, with its principal place of business in Virginia

Beach, Virginia. Cellar Door Productions promotes concerts in the Virginia region, and has always been given the opportunity by the booking agency defendants of promoting concerts performed by both black and white acts of contemporary music. Cellar Door Productions Inc. has been recently acquired by SFX.

38. Defendant Cellar Door Productions of D.C. Inc. is a corporation organized and existing under the laws of the Commonwealth of Virginia, with its principal place of business in Alexandria, Virginia. Cellar Door Productions of D.C. promotes concerts in the Washington, D.C. region, and has always been given the opportunity by the booking agency defendants of promoting concerts performed by both black and white acts of contemporary music. Defendant Cellar Door Productions of D.C. Inc. has been recently acquired by SFX.

39. Defendant Cellar Door (Southern) Corporation is a corporation organized and existing under the laws of the State of Florida, with its principal place of business in Decatur, Georgia. Cellar Door (Southern) Corporation promotes concerts primarily in the Atlanta, Georgia area, and has always been given the opportunity by the booking agency defendants of promoting concerts performed by both black and white acts of contemporary music. Defendant Cellar Door (Southern) Corporation has been recently acquired by SFX.

40. Defendant Cellar Door Entertainment, Inc. is a corporation organized and existing under the laws of the State of Virginia, with its principal place of business in Virginia Beach, and has always been given the opportunity by the booking agency defendants of promoting concerts performed by both black and white acts of contemporary music. Defendant Cellar Door Entertainment, Inc. has recently been recently acquired by SFX.

41. Defendant Concert/Southern Promotions Inc. ("Concert/Southern") is a corporation organized and existing under the laws of the State of Georgia with its principal place of business in Atlanta, Georgia. Concert/Southern Promotions is a concert promoter, operating primarily in the Southeastern United States, and has always been given the opportunity by the booking agency defendants of promoting concerts performed by both black and white acts of contemporary music. This company operates under the individual trade names "Alex Cooley" and "Peter Conlon."

42. Defendant Contemporary Productions Inc. ("Contemporary Productions") is a corporation organized and existing under the laws of the State of Missouri, with its principal place of business in St. Louis, Missouri. Contemporary Productions is the predominant concert promoter operating in the region surrounding St. Louis, which includes portions of Missouri, Kansas, Nebraska and Oklahoma, and has always been given the opportunity by the booking agency defendants of promoting concerts performed by both black and white acts of contemporary music. Contemporary Productions has been recently acquired by SFX.

43. Defendant Delsener/Slater Enterprises, Ltd. ("Delsener/Slater") is a corporation organized and existing under the laws of the State of New York, with its principal place of business in New York, New York. Delsener/Slater Enterprises is the predominant concert promotion company operating in the New York City metropolitan area, and has always been given the opportunity by the booking agency defendants of promoting concerts performed by both black and white acts of contemporary music. Delsener/Slater has been recently acquired by defendant SFX Entertainment, Inc.

44. Defendant DiCesare-Engler, Inc. ("DiCesare-Engler") is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal place of business in Pittsburgh, Pennsylvania, and is the predominant concert promoter in Pittsburgh, Pennsylvania. DiCesare-Engler has always been given the opportunity by the booking agency defendants of promoting concerts performed by both black and white acts of contemporary music. Defendant DiCesare-Engler, Inc. has been recently acquired by SFX.

45. Defendant Don Law Company, Inc. ("Don Law") is a corporation organized and existing under the laws of the Commonwealth of Massachusetts, with its principal place of business in Boston, Massachusetts. Don Law Company is the predominant concert promoter in the New England region, and has always been given the opportunity by the booking agency defendants of promoting concerts performed by both black and white acts of contemporary music. Don Law has been recently acquired by SFX.

46. Defendant Electric Factory Concerts, Inc. ("Electric Factory") is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal place of business in Philadelphia, Pennsylvania. Electric Factory promotes concerts in Pennsylvania, Ohio, New Jersey and Delaware and is the predominant concert promoter in Philadelphia, Pennsylvania. It has always been given the opportunity by the booking agency defendants of promoting concerts performed by both black and white acts of contemporary music. Electric Factory has been recently acquired by SFX.

47. Defendant Evening Star Productions, Inc. ("Evening Star") is a corporation organized and existing under the laws of the State of Arizona, with its principal place of business in Phoenix, Arizona, and is the predominant concert promoter in Arizona and New Mexico.

Evening Star has always been given the opportunity by the booking agency defendants of promoting concerts performed by both black and white acts of contemporary music.

48. Defendant Fantasma Productions of Florida, Inc. ("Fantasma") is a corporation organized and existing under the laws of the State of Florida, with its principal place of business in West Palm Beach, Florida, and promotes concerts throughout Florida. Fantasma has always been given the opportunity by the booking agency defendants of promoting concerts performed by both black and white acts of contemporary music.

49. Defendant Jam Productions Ltd. ("Jam Ltd.") is a corporation organized and existing under the laws of the State of Illinois, with its principal place of business in Chicago, Illinois. Jam Ltd. is the predominant concert promoter in the Minneapolis-St. Paul, Minnesota metropolitan area, and in the Chicago, Illinois metropolitan area, and has always been given the opportunity by the booking agency defendants of promoting concerts performed by both black and white acts of contemporary music.

50. Defendant Magicworks Concerts, Inc. ("Magicworks") is a corporation organized and existing under the laws of the State of Ohio, with its principal place of business in Aurora, Ohio. Magicworks promotes concerts in various locations, and has always been given the opportunity by the booking agency defendants of promoting concerts performed by both black and white acts of contemporary music. Magicworks has been recently acquired by SFX.

51. Defendant Pace Concerts, Inc. ("Pace") is a corporation organized and existing under the laws of the State of Texas, with its principal place of business in Houston, Texas. Pace Concerts is a national promoter of concerts, and the dominant concert promoter in Texas, and has always been given the opportunity by the booking agency defendants of promoting concerts

performed by both black and white acts of contemporary music. Pace has been recently acquired by SFX.

52. Defendant Sunshine Promotions, Inc. ("Sunshine") is a corporation organized and existing under the laws of the State of Indiana, with its principal place of business in Fishers, Indiana. Sunshine is the predominant promoter in Kentucky and Indiana, and has always been given the opportunity by the booking agency defendants of promoting concerts performed by both black and white acts of contemporary music. Sunshine has been recently acquired by SFX.

53. Defendant SFX is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in New York, New York, and has always been given the opportunity by the booking agency defendants of promoting concerts performed by both black and white acts of contemporary music. Within approximately the past two years, SFX has expanded to become the largest promoter of concerts in the United States by acquiring many major concert promoters in the country, specifically defendants BGP, Contemporary Productions, Delsener/Slater, Dicesare-Engler, Don Law, Electric Factory, Magieworks, Pace, Sunshine, Cellar Door, Cellar Door Concerts of Carolinas, Inc., Cellar Door Concerts of Florida, Inc., Cellar Door Productions of Michigan, Inc., Cellar Door North Central, Inc., Cellar Door Productions, Inc., Cellar Door Productions of D.C., Inc., Cellar Door (Southeast) Corporation, and Cellar Door Entertainment Inc. This recent confederation (collectively referred to as the "SFX Defendants") has been the subject of an antitrust investigation by the United States Department of Justice.

54. Defendant WJS III, Inc., doing business as Bill Silva Presents ("Bill Silva Presents"), is a corporation organized and existing under the laws of the State of California, with

its principal place of business in San Diego, California. Bill Silva Presents is a concert promoter operating in California, Idaho and Nevada, and is the predominant concert promoter in San Diego and Los Angeles, California. It has always been given the opportunity by the booking agency defendants of promoting concerts performed by both black and white acts of contemporary music.

55. Defendants Beaver Productions, Belkin Productions, BGP, Bill Silva Presents, Cellar Door, Cellar Door Concerts of Carolinas Inc., Cellar Door Concerts of Florida Inc., Cellar Door Productions of Michigan Inc., Cellar Door North Central, Inc., Cellar Door Productions, Inc., Cellar Door Productions of D.C., Inc., Cellar Door (Southern) Corporation, Cellar Door Entertainment Inc., Concert/Southern, Contemporary Productions, Delsener/Stater, DiCesare-Engler, Don Law, Electric Factory, Evening Star, Fantasma, Jam Ltd., Magicworks, Pace, SFX, and Sunshine Promotions are collectively referred to hereinafter as the promoter defendants.

56. This Court has personal jurisdiction over all of the promoter defendants because each defendant does or transacts business in the State of New York, each contracts to supply services in the State of New York, and each joined the conspiracy alleged herein knowing that it would cause damage within the State of New York.

57. Concert promoters 462 Inc., United Concerts, Inc. and Universal Concerts, Inc. are named herein as concert promoter co-conspirators, but are not named as defendants herein.

VI. MARKET DEFINITION

58. The entire United States is a single national market wherein promoters compete for the rights to obtain contracts to promote concerts. In addition, there are local regional

markets, generally incorporating the metropolitan areas surrounding each major city, for the promotion of concerts within each such region. The relevant product market is concert promotions.

VII. FACTS

A. The Concert Promotion Business

59. Artists who perform live in concert generally engage booking agencies to procure their engagements. These agencies select and contract with promoters, functioning in particular geographic locations, to present the concerts.

60. A booking agent, acting on behalf of an artist, contacts a concert promoter in order to retain its services to produce a concert at a particular location, on an agreed date. Sometimes two or more promoters co-promote concerts, and share profits and losses. The booking agency typically fixes the artist's fees, which a promoter may attempt to negotiate. The artist's fee is usually the greater of (a) 85% of net concert revenues (gross revenues less expenses, which include rent, advertising, stage hands, sound, lights, security and the like), or (b) a minimum guaranteed fee. Major artists can command as much as 90% of net concert revenues. A booking agent typically receives between 5 and 10% of an artist's fee. A promoter generally receives the remaining 15% of net revenues, or the amount remaining after the artist's minimum guaranteed fee is paid.

61. Once a booking agent and a promoter agree upon a fee, the booking agent issues a contract for the artist's services. The promoter must then rent or otherwise secure the venue where the concert will take place. Venues include small clubs, large clubs, college gyms, auditoriums, outdoor amphitheaters (commonly called "sheds"), large sports arenas and

stadiums. Some promoters own or have exclusive booking arrangements with specific venues. If another promoter wishes to promote a concert in such a venue, arrangements can be made with the promoter controlling the venue. Once a venue is contractually secured, the promoter then sells tickets to the public, either directly or through ticket sales outlets. The promoter also advertises the concert, arranges security and performs various other tasks to present the concert.

B. Plaintiffs' Participation In the Industry

62. Plaintiffs have all been concert promoters for in excess of 20 years. At all relevant times, plaintiffs have been, and continue to be, qualified, experienced, and competent concert promoters. Plaintiffs have successfully promoted concerts given by black artists including, when given the opportunity, concerts given by major black artists performing in the largest venues.

63. Plaintiffs are often contacted and retained by booking agency defendants to promote concerts to be given by black artists, and are well known and respected for their work. Plaintiffs are never contacted by booking agent defendants to promote concerts to be given by white artists, and are often excluded from the promotion of concerts to be given by major black artists, even though plaintiffs are fully able to promote all such concerts and to compete with white concert promoters for any and all concert promotion business.

C. Defendants' Market Shares

64. The concert industry has expanded dramatically over the last twenty years. The booking agency defendants and promoter defendants exercise a significant degree of control over, and all realize vast profits from, this lucrative industry.

65. In order to estimate total market shares, plaintiffs have studied data for a one-year test period (June 1998 through May 1999) ("test period"), concerning concerts of contemporary music in the United States performed at venues with a seating capacity of 3,000 seats, or more ("Major Concerts"). Major Concerts account for a substantial majority of the profits in the contemporary music concert business. The data examined for this study is taken from Pollstar, the weekly industry periodical reporting concert and tour information, which provides music concert industry professionals with the most reliable and accurate source of box office results, and is recognized in the music industry as the authority on concert activity. The study demonstrates the total dominance maintained by the defendants over the industry, and the virtually complete exclusion of the plaintiffs. The data gleaned from Pollstar for the test period is representative of earlier time periods.

66. In the test period, there were approximately 2,460 Major Concerts. A list of artists who performed at the Major Concerts is annexed hereto as Exhibit A.

67. The number of Major Concerts for which one or more of the promoter defendants or uncharged promoter conspirators were engaged totals approximately 1,625, representing an estimated 65% of Major Concerts. Beaver Productions promoted or co-promoted 73 of the Major Concerts. Belkin Productions promoted or co-promoted 115 of the Concerts. BGP

promoted or co-promoted 140 of the Major Concerts. The various Cellar Door entities promoted or co-promoted 259 of the Major Concerts. Concert/Southern promoted or co-promoted 21 of the Major Concerts. Contemporary Productions promoted or co-promoted 81 of the Major Concerts. Defendant Delsener/Slater promoted or co-promoted 163 of the Major Concerts. Defendant DiCesare-Engler promoted or co-promoted 34 of the Major Concerts. Defendant Don Law promoted or co-promoted 11 of the Major Concerts. Defendant Electric Factory promoted or co-promoted 53 of the Major Concerts. Defendant Evening Star promoted or co-promoted 55 of the Major Concerts. Defendant Fantasma promoted or co-promoted 31 of the Major Concerts. Jam Ltd. promoted or co-promoted 111 of the Major Concerts. Magicworks promoted or co-promoted 59 of the Major Concerts. Pace promoted or co-promoted 133 of the Major Concerts. Sunshine Promotions promoted 56 of the Major Concerts. SFX promoted or co-promoted 14 of the Major Concerts. WJS III promoted 57 of the Major Concerts.

68. The SFX Defendants promoted or co-promoted approximately 700 of the Major Concerts. Co-conspirator 462 Inc. promoted or co-promoted 13 of the Major Concerts. Co-conspirator United Concerts, Inc. promoted or co-promoted 8 of the Major Concerts. Co-conspirator Universal Concerts, Inc. promoted or co-promoted 146 of the Major Concerts.

69. Of the total 2,460 Major Concerts presented during the test period, 2,175 were performed by white acts ("White Concerts"). Black promoters promoted none; white promoters promoted 100% of White Concerts. (35 Major Concerts were of Hispanic music, which are omitted from both black and white totals)

70. In the test period, there were approximately 250 Concerts performed by black acts ("Black Concerts). Black promoters promoted six Black Concerts, or less than 3%. White promoters promoted in excess of 97% of the Black Concerts.

71. In the test period, approximately 1,630, or approximately 71%, of the Major Concerts were given by artists represented by the defendant booking agents or co-conspirator booking agents. William Morris booked approximately 275 of Major Concerts. CAA booked approximately 650 of Major Concerts. APA booked approximately 46 of Major Concerts. Monterey Peninsula hooked approximately 247 of Major Concerts. QBQ booked approximately 127 of Major Concerts. Rose Agency booked approximately 62 of Major Concerts. Renaissance booked approximately 93 of Major Concerts. Co-conspirator ARTISTdirect booked approximately 69 of Major Concerts. Co-conspirator Artists and Audience Entertainment booked approximately 49 of Major Concerts. Co-conspirator Premier Talent booked approximately 7 of Major Concerts. Non-defendant talent agent International Creative Management ("ICM") represented artists who gave approximately 130 of Major Concerts. ICM has not been named as a defendant in this action because, although it does not allow plaintiffs to promote concerts of white performers, it has allowed plaintiffs to promote concerts given by ICM's top major black performers, such as Boyz II Men.

72. The market shares of the promoter defendants in the particular territories in which they predominate are greater than the national market shares reflected in the test period. In such localities, these promoter defendants control between 75% and 95% of concerts of both white and black artists. By contrast, the plaintiffs each promote 1% to 2% of the concerts performed by only black artists in their respective regions.

73. At current levels, it is estimated that the promoter defendants and co-conspirator promoters combined gross income from concerts of contemporary music is \$200 million. The booking agency defendants' and co-conspirator agents' combined gross income from such concerts is estimated to be approximately the same.

**D. Defendants Have Conspired To
Conduct A Boycott Against Plaintiffs
Causing Antitrust Injury**

74. Defendants' dominance of the market provides the promoter defendants and the booking agency defendants with the control and power, which they exercise, to purposefully exclude others, including plaintiffs, from competing in the concert industry.

75. At all times relevant to this action, the defendants combined, conspired, confederated, cooperated, contracted and conducted a boycott against plaintiffs, with each other and with other persons, both known and unknown to plaintiffs, in unreasonable restraint of trade and commerce among the several States, in the relevant markets, to exclude and effect a boycott against black promoters, including the plaintiffs, on the basis of race.

76. As a part of the conspiracy, the promoter defendants are designated specific territories and venues, allowing them great dominance and control in these areas, to the exclusion of plaintiffs and others. In some instances, a second promoter defendant may act as a co-promoter beyond its usual region. In such cases, the defendant promoter who controls a venue will often act as co-promoter.

77. The conspiracy benefits white promoters, particularly the promoter defendants, by eliminating competition from black promoters, who are their direct competitors. In addition, the conspiracy is driven by the racial animus of all defendants toward black persons.

78. The conspiracy to boycott black promoters, including plaintiffs, and to discriminate against them as alleged herein, is conducted by defendants in order to benefit white promoters, particularly the promoter defendants, by eliminating black promoters as competitors, and to maintain a market for the promotion of concerts which can be controlled and ordered by the conspirators. The conspiracy has had and continues to have a major anticompetitive effect upon interstate trade and commerce to the detriment of the public. The conspiracy virtually eliminates competition among promoters and prevents concerts from being promoted at lower prices which would benefit artists and the public.

79. Each of the booking agency defendants reaps tremendous economic benefit from, and has great incentive to allow, the promoter defendants to control, a particular territory for concert promotions. A booking agency defendant's roster of talent typically includes artists who are superstars or highly successful, and artists who are less popular, lesser known or unknown. The booking agency defendants are able to maintain ultimate control over the concert promotion market, and guarantee the promotion of all of their acts, including the less successful ones, by assuring the promoter defendants that they will always be given the opportunity, to the exclusion of all others, of promoting the defendant booking agents' top acts in the promoter defendant's assigned territory, at highly profitable rates. In exchange for this lucrative, anticompetitive agreement, the booking agency defendants are able to assure artists that the promoter defendants will guarantee the sale of tickets for concerts given by less successful acts

on the booking agency defendants' talent rosters. Since these concerts may not generate ticket sales sufficient to pay the artists' guaranteed amounts, the promoter defendants may suffer losses on such concerts. The promoter defendants' ability to rely on promoting the booking agency defendants' top acts (commanding the highest ticket prices and selling out the largest venues at anticompetitive high rates) is the quid pro quo for their agreement to bear losses on lesser acts. Because the promoter defendants are given exclusive contracts to promote the top acts, both white and black, which sell out without effort or expense, they are always able to profit, each earning millions of dollars per year. In addition, this arrangement makes entry into the booking agency market far more difficult. A new booking agent, without top acts to enrich defendant promoters, cannot assure new acts of the successful tours which the booking agency defendants can guarantee.

80. As described above in ¶ 60, the promoter defendants generally receive 15% of the net sales revenues of a concert. The conspiracy among the booking agency defendants and the promoter defendants prevents competition in the market, resulting in anticompetitive and antitrust injury. If plaintiffs were permitted to compete with defendant promoters for the promotion of concerts given by major acts, white and black promoters' fees would decrease because such concerts could profitably be promoted at rates of 5% of revenues, or even less. Reduced promoter fees would benefit the public through lower ticket prices, or artists, through greater net revenues, or both.

81. In furtherance of the conspiracy, all of the booking agency defendants are willing to forego the enhanced compensation they would receive from major artists through reduced promoter fees which would result from unrestrained competition, although it is apparently

against their economic self interest. This is because the conspiracy ensures that all of their acts, including their less stellar acts, will be accepted and promoted by the promoter defendants within each of their geographically allocated territories. The promoter defendants are uniformly willing to promote the lesser acts in exchange for promoting the successful acts and for their continuing dominant presence in their assigned geographic territories. The acts of all of the defendants are thus interrelated and interdependent, and the success of the conspiracy depends upon all of the defendants consciously pursuing the identical parallel conduct, which they have done.

82. The control exercised by the defendants over major venue sites for top concerts, including the large outdoor amphitheatres (which derive substantial revenue from corporate sponsors, such as Coca-Cola and Miller Beer), enables them to reap the financial rewards therefrom, to the exclusion of plaintiffs. The conspiracy has enabled many of the promoter defendants, including most of the SFX Defendants, to purchase amphitheatres where major concerts are held. These defendants were able to purchase such venues because they could rely upon receiving sufficient revenues from sponsors. The promoter defendants could obtain sponsorship support because they can predict and, in effect, guarantee the sponsors, that they would promote a sufficient number of top black and white acts in their region at that site. No black promoter, including plaintiffs, has been given the equal opportunity of promoting the types of major acts required to secure lucrative sponsorship deals and amphitheatre ownership.

83. The conspiracy also negatively impacts upon the black business community because white promoters, including the promoter defendants, rarely retain the services of black-owned businesses servicing concerts, such as caterers, transportation providers, and security services. This has a negative ripple effect throughout the black community.

E. Defendants' Overt Wrongful Acts

84. In furtherance of and as a part of the conspiracy, the booking agency defendants have committed the overt acts of exclusively retaining white promoters, particularly the promoter defendants, to promote concerts given by all white artists and many black artists, purposefully excluding plaintiffs from such concert promotions, including from all of the promotions of the Concerts identified on Exhibit A in which defendants were involved. No black promoter has been given the opportunity by any booking agency defendant to bid on any contract to promote any white act performing contemporary music. In glaring contrast, the promoter defendants are allowed to bid on all contemporary music acts, both white and black. Each contract between a defendant booking agent and a promoter defendant to promote a Concert identified on Exhibit A is an overt act in furtherance of the conspiracy, as well as a contract which plaintiffs were denied the equal right to make and enforce.

85. In furtherance of the conspiracy, white promoters, particularly the promoter defendants, pressure booking agents to join in and adhere to the conspiracy. Each promoter defendant has also committed the overt act of refusing to co-promote any white concert with any of the plaintiffs in the promoter defendant's particular region, and has fought against co-promoting with plaintiffs even those concerts of black artists which plaintiffs, through protesting efforts, have convinced a booking agent defendant to permit them to promote.

86. The defendants, acting in concert, have also deprived plaintiffs of promoting concerts to be given by black artists that plaintiffs had assisted in developing to the point of stardom by promoting their concerts at earlier times in their careers. While it has long been customary in the concert promotion industry for white promoters to continue promoting the

concerts of highly popular artists whose concerts they handled prior to such artists having become star performers, different standards have been applied to black promoters. Defendants systematically exclude plaintiffs from promoting top black artists that plaintiffs helped to bring to superstardom.

87. Specific examples of defendants' overt acts, designed to maintain defendants' control of the market, and which illustrate the unlawful conspiratorial and discriminatory conduct of defendants, follow:

- (a) During the 1970's, plaintiffs Rowe, Rowe Entertainment, Lee King and King Promotions promoted and nurtured a black music group known as The Commodores, during which time the group's popularity increased. However, when The Commodores' lead singer, Lionel Richie, became a major solo performer, his booking agency, Rose Agency, excluded all of the plaintiffs from the promotion of his solo concerts, instead retaining promoter defendants continuously until the present time, to promote his concerts.
- (b) In the late 1970s, plaintiffs Jesse Boseman and Sun Song promoted concerts given by the Artist formerly known as Prince at a time when the Artist was merely the opening act for a then headlining performer, Rick James. In promoting such concerts, those plaintiffs helped the Artist achieve his own following. The Artist has now achieved star status, but his booking agency, CAA, now retains only promoter defendants to promote the Artist's concerts, including his 1998 tour.

- (c) In connection with concerts to be given by the Grammy award-winning R&B performer, Erykah Badu, a black performer, and not long prior to release of Ms. Badu's debut album in early 1997, plaintiff Jesse Boseman telephoned Badu's agent, Cara Lewis at William Morris, and asked to promote Badu's concerts at either of two New York City venues on specific dates. Lewis, who personally knows Boseman, denied that Badu was scheduling concerts. In or about March 1997, Mr. Boseman asked Ron Delsener of Delsener/Slater to telephone Lewis and inquire whether Badu was scheduling concerts. Delsener thereupon telephoned Lewis and was informed that Badu was in fact scheduling concerts and, in Boseman's presence, Delsener obtained from Lewis the right to promote a May 1997 concert to be given by Badu at the Supper Club in New York City. After Badu's second album was released in November 1997, the BPA telephoned Lewis at William Morris to request concert dates for Badu's 1998 tour. Lewis assured the BPA that there were no concert dates planned. Within a month thereafter, however, the promoter defendants were assigned numerous Badu tour dates by William Morris.
- (d) Prior to the filing of this action, plaintiffs sought the opportunity to promote concerts given by black R&B artist Maxwell, Rolling Stone Magazine's Breakthrough Artist of 1996. The BPA contacted Jeff Frasco in or about June 1998, an agent at William Morris's Beverly Hills office, who verbally committed to having black promoters involved in Maxwell's

concerts. Shortly thereafter, however, plaintiffs discovered that promoter defendants had been retained to promote concert dates for Maxwell, and that plaintiffs were excluded. After this action was filed, defendants William Morris, BGP, Bill Silva Presents, Jam, Ltd., Cellar Door, SFX, Electric Factory, Delsener/Slater, Pace, Don Law and co-conspirator Universal Concerts excluded plaintiffs from bidding on the contracts for the promotions of the concerts on the 1999 tour given by Maxwell. These defendants, acting in concert, "engaged" a company called Magic Johnson Enterprises (MJE), named after a black basketball star, Magic Johnson, as purported co-promoter of the Maxwell tour, in lieu of engaging any of the plaintiffs. Neither Magic Johnson nor MJE has any experience in the concert promotion business. Defendants' conduct is a maneuver designed to create the false illusion that defendants' have engaged a black promoter on the Maxwell tour. In reality, defendants' act evidences their intention to perpetuate the conspiracy.

- (e) In the late 1980's and the 1990's, William Morris excluded plaintiffs from promoting shows given by William Morris' black artists the Temptations, Barry White, Earth Wind & Fire, War and Lauren Hill. The promoter defendants were given promotion contracts for these acts. In 1998, Electric Factory was given the exclusive contract to promote nationwide tours of Earth Wind & Fire and Barry White. Both of these acts were previously promoted by Rowe and Rowe Entertainment, and Electric

Factory was aware of their earlier involvement with those groups, but excluded them.

- (f) Black artist Toni Braxton was promoted by plaintiffs Rowe and Boseman before she became a superstar. Once she became a star, however, plaintiffs were excluded from promoting her shows. In connection with a tour she was scheduled to perform with white artist Kenny G in 1997, CAA made misrepresentations to plaintiff Rowe. After Rowe made inquiry concerning plaintiffs' being able to promote her concerts, Rowe was advised by Mike Piranian of CAA in October 1996, that minimum artist guarantees of \$225,000 to \$275,000 per show were required from any of the plaintiffs, with a fifty (50%) deposit required upon contract signing. Plaintiffs later learned that the defendant promoters, who were actually retained to promote these concerts, were required to guarantee only \$150,000 to \$175,000 per show. No white promoter, including any of the promoter defendants promoting this tour, was required to submit a deposit of any more than 0 - 10% of the \$150,000-175,000 guarantee. The effect of this discriminatory and disparate practice was intended to eliminate all black promoters, including all of the plaintiffs, from the bidding process on the Toni Braxton tour. In order for plaintiffs to have bid successfully for 10 of the Toni Braxton shows, at \$250,000 per show, plaintiffs would have been required to deposit not less than \$1,250,000. In contrast, defendant promoters were required to deposit either nothing or, at

maximum, 10% of \$175,000, or a total of \$175,000 for 10 shows. The booking agency defendants William Morris and CAA (who each represented one of the two acts), thus required that plaintiffs post over \$1,000,000 more than the promoter defendants for 10 shows by Toni Braxton. Plaintiffs became enraged upon learning of this treatment, and announced that they intended to picket the concert. CAA and William Morris eventually allowed plaintiffs to co-promote a few of the Toni Braxton shows with the defendant promoters. The promoter defendants who promoted the Toni Braxton concerts were aware of the plaintiffs' inquiry, and were forced to co-promote certain shows with plaintiffs, over their objections. Certain of the promoter defendants were particularly insistent about excluding plaintiffs. Belkin, the owner of Belkin Productions, vigorously sought to exclude plaintiffs from the show in the Gund Arena in Cleveland, Ohio, even after CAA and William Morris agreed to permit plaintiffs to co-promote the show, and even though plaintiffs explained to Belkin that they had previously promoted Toni Braxton. Similarly, Don Fox of Beaver Productions refused to allow any of the plaintiffs to promote Toni Braxton in his territory, the Lake Front Arena in New Orleans, telling Rob Light of CAA that he would not allow it. Fox was able to exclude them, even as co-promoters. Rob Light communicated this refusal to Rowe. Another principal of a promoter defendant, Larry Maggot of Electric Factory, was also successful in

excluding plaintiffs from even co-promoting the Toni Braxton show in Philadelphia. The other promoter defendants who were well aware of the Toni Braxton incident, and who were forced, over their objections, to co-promote 10 of Toni Braxton's shows with plaintiffs in their respective territories were Don Law (Boston, MA); DiCesare-Engler (Pittsburgh, PA); Contemporary Productions (St. Louis, MO); Fantasma (Florida); Cellar Door (Detroit); Jam Ltd. (2 shows in Chicago); Concert/Southern Promotions (Atlanta); Delsener/Slater (New York); and Belkin Productions (Cleveland).

- (g) QBQ books the black artist Luther Vandross. Plaintiff Rowe promoted Luther Vandross' shows in 1985 in Tampa, Florida, along with black artist Patti LaBelle. At that time, Luther Vandross' talent agency was Famous Artists. In late Summer 1997, after Vandross engaged QBQ as his agent, Rowe asked Dennis Arfa, President of QBQ and former William Morris executive, for permission to bid on promoting Vandross' shows. After plaintiffs protested, Rowe was permitted to co-promote only one show in Atlanta with Universal Concerts, and Boseman was permitted to co-promote only one show in New York with Delsener/Slater.
- (h) Also in late Summer 1997, plaintiff Rowe asked to co-promote a Luther Vandross show in New Orleans with Beaver Productions. Rowe explained to Don Fox of Beaver that he had previously promoted the act. Fox nevertheless refused to allow Rowe to co-promote the show.

- (i) In or about 1996, QBQ refused to permit any black promoter even to bid on Billy Joel's concert tours despite their specific request to submit bids thereon.
- (j) Within the last several years, plaintiff Bernard Bailey solicited talent agent Jim Gosnell of APA to promote a concert date for white artist Tony Bennett in Charlotte, North Carolina. He was told by Mr. Gosnell that there were no available dates. He subsequently learned that one of the Cellar Door entities was later retained to promote a Tony Bennett concert in Charlotte.
- (k) In April 1998, Rob Kelly, a white person in charge of non-defendant concert promoter Mid-South Concerts, operating in Memphis, Tennessee, died. Contrary to most practices in the industry, Kelly had closely associated with plaintiffs Fred Jones and Summitt in the promotion business. Fred Jones and Summitt thereupon sought to continue Mid-South's business of promoting major white and black white acts in Memphis. The City of Memphis initially decided to continue doing such business with Fred Jones and Summitt. While still negotiating the terms of an exclusive agreement to promote shows in the venue Mud Island Amphitheatre in Memphis, Fred Jones and Summitt wrote to many booking agency defendants and others, including Rose Agency, William Morris, QBQ, Monterey, APA, CAA, as well as to Billboard, Pollstar and Performance magazines, advising them of his expected role as concert

promoter at that venue. Beaver Productions' executive Barry Leff, however, then wrote to the Memphis Director of Parks Commission, urging the City not to enter into any agreement with Fred Jones and Summitt, and informing the City that Beaver would be opening an office in Memphis, where it had not previously done business, expressly at the request of the top talent agencies in the country. Fred Jones and Summitt lost the agreement to promote at Mud Island and all ensuing business. Beaver is now the predominant promoter in Memphis.

- (l) Defendant Magicworks was given the exclusive contract to promote a tour given by superstar black performer, Janet Jackson, in 1998, by defendant CAA. Magicworks co-promoted the tour with the other promoter defendants. Several of the plaintiffs had previously promoted Janet Jackson shows in 1994, and had also promoted her superstar brother, Michael Jackson. Plaintiffs protested and were allowed to only co-promote shows in New York and Los Angeles with defendants Delsener/Slater and Magicworks. The BPA also wrote to Magicworks' executive Brad Wavra on March 31, 1998, before this action was filed, complaining of the discriminatory treatment exhibited to black promoters on the Janet Jackson tour, as well as being excluded from promotion of white acts such as Fleetwood Mack and Elton John.
- (m) In or about 1979 and 1980, plaintiffs Rowe Entertainment, Sun Song Productions and Lee King Productions successfully promoted a major

national tour of 70 cities performed by Michael Jackson and the Jacksons. At that time, Triad, an agency later taken over by William Morris, represented the Jacksons and had attempted to prevent plaintiffs from promoting these concerts. The Jackson family, however, insisted that plaintiffs Rowe and Rowe Entertainment be contracted to promote the entire tour. By the following year, however, the Jacksons were represented by Rose Agency. When a new tour was announced in 1981, Leonard Rowe, Jesse Boseman and Lee King all contacted Howard Rose of Rose Agency to attempt to promote it. Mr. Rose refused to allow any of them to participate in the tour, and has always done business exclusively with white promoters, particularly the promoter defendants.

- (n) Because of the conspiracy among the defendant booking agency defendants and the promoter defendants not to do business with non-conspirators, SFX was compelled to buy the promoter defendants' businesses in their respective territories, rather than attempt to compete with them. The booking agency defendants would not otherwise contract with SFX to do business in particular territories despite SFX's reported \$2 billion in liquid assets, because of their anticompetitive agreement with the promoter defendants. The major asset purchased by SFX in acquiring dependent booking agents was the revenue they would realize as a result of their participation in the conspiracy.

- (o) In or about May 1999, after this lawsuit was filed, CAA recently hired the first black agent in the history of the concert business to participate in booking white contemporary music acts. Dennis Ashley telephoned plaintiff Rowe and thanked him for bringing this lawsuit because, he said, it was the reason he was hired. He told Rowe that he was being treated like a king.
- (p) In the 1980's, plaintiff Rowe made a proposal to promote concerts at the Atlanta city-owned amphitheatre, Chastain. He met Andrew Young, then Mayor of Atlanta, in approximately 1984, to seek his assistance. Rowe was advised that Alex Cooley of Concert/Southern had also sought the business. Because the City realized that Rowe could not bring white acts to Chastain, while Concert/Southern could promote both white and black acts, the contract was given to Concert/Southern. Because the booking agency defendants would not permit Rowe to promote any of their white contemporary music acts in Atlanta, or even their top black artists, Rowe could not obtain the city contract to promote shows at Chastain.

88. In order to attempt to end the booking agency defendants' practice of consistently refusing to contact or retain plaintiffs to promote concerts to be given by white acts and major black acts, plaintiffs have asked and demanded that the booking agency defendants, promoter defendants, and co-conspirators end their boycott and discrimination of black promoters and allow them the equal opportunity of promoting such concerts and participating in the bidding and contracting process. Such requests and demands have been made by plaintiffs, over many years.

and on many occasions, individually, together, and through the BPA, both formally and informally, through letters, facsimiles, face-to-face meetings and telephone calls, to several of the booking agency defendants and the promoter defendants. The defendants and co-conspirators have refused to end the boycott of black promoters, and have failed to respond to plaintiffs' requests. On occasion, certain booking agency defendants have dismissed plaintiffs' demands by falsely representing their intention to offer certain concert promotion contracts to plaintiffs, knowing that they would never do so. On some occasions, certain defendants have even ridiculed plaintiffs' demands, laughing in plaintiffs' faces at the very suggestion of contracting with black promoters to promote concerts to be performed by white and major black artists.

89. At public meetings held during, and as a part of, national conventions of persons involved in the music industry, plaintiffs have publicly raised the issues addressed in this complaint. At such meetings, plaintiffs asked the persons assembled to discuss and take steps to end the boycott and discriminatory conduct against black concert promoters described herein. The persons attending the meetings refused to even discuss the issues raised.

90. Well before the filing of the initial complaint in this action, all of the defendants were aware of the complaints by plaintiffs of boycott, conspiracy and racial discrimination from publications and commentary on the subject, including in a prominent article appearing in Billboard magazine in June 1997. Defendants took no steps to respond to these complaints.

91. As a result of defendants' conduct and conspiracy, plaintiffs have been and will continue to be deprived of the equal opportunity to compete and conduct their lawful business, and to make and enforce contracts in connection therewith, all on the basis of race. As a result,

the conspiracy unlawfully deprives plaintiffs of the equal protection of the laws, and deprives the individual plaintiffs of the privileges and immunities to which they are entitled as citizens.

92. In the absence of defendants' conspiracy and discriminatory acts, plaintiffs would have been able to promote a substantial portion of all concerts, including the Concerts in which defendants were involved, given by white and top-drawing black artists throughout the United States and would have derived substantial income therefrom.

93. At all relevant times, all of the defendants have had actual knowledge of the conspiracy and the wrongs committed in furtherance thereof and alleged herein, to boycott and exclude black promoters from meaningful participation in the concert promotion business on the basis of race.

94. At all relevant times, all of the defendants have had the ability to end the said conspiracy and to prevent the wrongful acts committed in furtherance thereof through the exercise of reasonable diligence, and to aid and assist therein, for the purpose of enabling black promoters to freely compete without discrimination. All defendants have refused and neglected to take steps to end the said conspiracy. Instead, all defendants have knowingly perpetuated the conspiracy and profited therefrom.

FIRST CLAIM BY THE CORPORATE PLAINTIFFS
(Sherman Act, Section 1 – Damages)

95. The corporate plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 94 hereof.

96. Defendants have combined, conspired, confederated, cooperated, contracted and conducted a boycott against the corporate plaintiffs, with each other and with others, both known

and unknown to those plaintiffs, in unreasonable restraint of trade and commerce among the several States, in connection with the promotion of concerts performed by white artists and major black artists, to exclude and effect a boycott against black promoters, including such plaintiffs, which has caused antitrust injury to the public.

97. As a result thereof, the corporate plaintiffs have been injured in their businesses and properties in an amount to be determined at trial, but not less than \$150 million.

SECOND CLAIM BY THE CORPORATE PLAINTIFFS
(Sherman Act, Section 1 - Injunction)

98. The corporate plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 94, and 96 hereof.

99. Those plaintiffs have no adequate remedy at law.

THIRD CLAIM
(Civil Rights Act, 42 U.S.C. §1981)

100. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 94 hereof.

101. Defendants have intentionally discriminated and continue to intentionally discriminate against plaintiffs on the basis of race.

102. Defendants' unlawful racial discrimination concerns the right to make and enforce contracts.

103. Defendants, and each of them, have aided and abetted the unlawful acts alleged herein committed by other defendants.

104. As a result of defendants' unlawful intentional racial discrimination against plaintiffs, conducted with malice, plaintiffs have been damaged in an amount to be determined at trial, but not less than \$200 million.

FOURTH CLAIM
(Civil Rights Act, 42 U.S.C. § 1985(3))

105. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 94, and 101 through 104 hereof.

106. Defendants have combined, conspired, confederated, conspired, cooperated and contracted with each other and with others, both known and unknown to plaintiffs, for the purpose of depriving plaintiffs of the equal protection of the laws, and the equal privileges and immunities under the laws, including the right to make and enforce contracts, in connection with the promotion of concerts performed by white and major black artists.

107. Defendants have engaged in overt acts in furtherance of their illegal conspiracy against plaintiffs.

108. As a result of defendants' illegal conspiracy against plaintiffs, plaintiffs have been injured in their persons and properties, in an amount to be determined at trial, but not less than \$200 million.

FIFTH CLAIM
(Civil Rights Act, 42 U.S.C. § 1981 and § 1985(3) - Injunction)

109. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 94, 101 through 103 and 104 through 107 hereof.

110. Plaintiffs have no adequate remedy at law.

SIXTH CLAIM
(Civil Rights Act, 42 U.S.C. § 1986)

111. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 94, 101 through 103 and 104 through 107 hereof.

112. At all relevant times, defendants and each of them has had actual knowledge of the conspiracy to discriminate against plaintiffs and wrongful acts committed in furtherance thereof, as alleged herein, and has had the power to prevent, or aid in preventing the conspiracy and acts in furtherance of the conspiracy against plaintiffs, as alleged herein.

113. Defendants and each of them neglected, refused and failed to prevent, or aid in preventing, the conspiracy and acts in furtherance of the conspiracy against plaintiffs.

114. As a result thereof, plaintiffs have been damaged in an amount to be determined at trial, but not less than \$200 million.

VIII. PRAYER FOR RELIEF

WHEREFORE, plaintiffs demand judgment as follows:

- A. On the first claim for relief, on behalf of the corporate plaintiffs, jointly and severally against the defendants, for compensatory damages to the corporate plaintiffs in an amount to be determined at trial, but not less than \$150 million, which amount should be trebled according to law;
- B. On the second claim for relief, on behalf of the corporate plaintiffs, permanently enjoining the defendants from engaging in the anticompetitive practices described

herein and from denying the corporate plaintiffs their right to freely compete in all aspects of the concert promotion business;

- C. On the third, fourth and sixth claims for relief, on behalf of all plaintiffs, jointly and severally against the defendants, for compensatory damages in an amount to be determined at trial, but not less than \$200 million, together with exemplary damages in an amount to be determined at trial, but not less than \$200 million;
- D. On the fifth claim for relief, on behalf of all plaintiffs, permanently enjoining the defendants from engaging in the discriminatory practices described herein, and from denying plaintiffs their right to freely and equally compete, contract and participate in all aspects of the concert promotion business; and
- E. On all claims for relief, for reasonable attorneys' fees, plus costs and disbursements.

Dated: New York, New York
August 9, 1999

RUBIN BAUM LEVIN CONSTANT
& FRIEDMAN

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