

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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In re: )  
 )  
MAGNETIC AUDIOTAPE ANTITRUST ) MASTER FILE  
LITIGATION ) No. 99-CV-1580 (LMM)  
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This Document Relates To: )  
 )  
ALL ACTIONS )  
\_\_\_\_\_)

**SETTLEMENT AGREEMENT**

THIS SETTLEMENT AGREEMENT is made as of the 21<sup>st</sup> day of January, 2003, by and between defendants Auriga Aurex, Inc., Aurex, S.A. de C.V. and Auriga Aurex, S.A. de C.V. (the "Aurex Defendants") and the plaintiff Class, as defined in paragraph 1 of this Settlement Agreement.

WHEREAS, plaintiffs in the above-captioned litigation (the "Class Action") have filed a Second Amended Consolidated Class Action Complaint dated June 17, 2002 and a Class Action Complaint, dated September 6, 2001, (the "Complaints"), wherein the plaintiffs have alleged that the Aurex Defendants and others have acted unlawfully by, among other things, conspiring to fix, raise, maintain or stabilize the prices of Pancake Audiotape;

WHEREAS, the Aurex Defendants deny each and every one of plaintiffs' allegations of unlawful conduct and have asserted a number of defenses to plaintiffs' claims;

WHEREAS, plaintiffs and the Aurex Defendants agree that neither this Settlement Agreement, nor any statement made in negotiation thereof, shall be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by the Aurex Defendants or of the truth of any of the claims or allegations alleged in the Complaint or otherwise;

WHEREAS, arm's-length settlement negotiations have taken place between counsel for the plaintiff Class and the Aurex Defendants, and this Settlement Agreement which embody all of the terms and conditions of the settlement between Aurex Defendants and the plaintiff Class, has been reached, subject to the final approval of the Court;

WHEREAS, plaintiffs' counsel have concluded, after due investigation and after carefully considering the relevant circumstances, the claims asserted in the Complaint, the legal and factual defenses thereto, and the applicable law, that it would be in the best interests of the Class to enter into this Settlement Agreement in order

to avoid time-consuming and expensive litigation with little prospect of recovering from substantially impecunious defendants;

WHEREAS, the plaintiff Class entered into a proposed settlements with defendants EMTEC ProMedia, Inc., EMTEC Magnetics GmbH and EMTEC International Holding GmbH (ëëEMTEC Defendantsíí), BASF Corporation and TDK Electronics Corporation and TDK Corporation (ëëTDK Defendantsíí) which are subject to final Court approval;

WHEREAS, this litigation will continue against the remaining defendants (except the EMTEC Defendants, BASF Corporation, BASF AG and TDK Defendants); and

WHEREAS, the Aurex Defendants have concluded, despite their belief that they are not liable for the claims asserted and have good defenses thereto, that they will enter into this Settlement Agreement solely to avoid the further expense, inconvenience and burden of this protracted litigation, and the distraction and diversion of its personnel and resources.

WHEREAS, the Aurex Defendants have represented that Aurex, S.A. de CV and Auriga Aurex S.A. de CV filed bankruptcy proceedings in the Superior Court of Justice of the Federal District , Mexico;

WHEREAS, the Aurex Defendants have represented that the financial information provided in the course of settlement discussions is truthful and accurate and fairly represents the extremely poor financial condition of the Aurex Defendants; and

WHEREAS, the Aurex Defendants have represented that they are financially unable to make a financial payment to settle this litigation in an amount satisfactory to Plaintiffsí Counsel;

NOW THEREFORE, it is agreed by and between the undersigned, on behalf of the Aurex Defendants and the plaintiff Class, that the Class Action and all claims of the Class be settled, compromised and dismissed without prejudice as to the Aurex Defendants and, except as hereafter provided, without costs as to the Aurex Defendants or the plaintiff Class, subject to the approval of the Court, on the following terms and conditions:

1. For purposes of this Settlement Agreement, the plaintiff Class consists of the Class certified by the Court on June 1, 2001, as follows:

All persons who, during the period January 1, 1992 to and including December 31, 1997, purchased Pancake Audiotape in the United States [directly] from defendants or any subsidiary or affiliate thereof, but excluding defendants, their parents, subsidiaries and affiliates, other manufacturers of Pancake Audiotape and governmental entities.

2. For purposes of this Settlement Agreement, Pancake Audiotape means audiotape consisting of a thin magnetic layer, or "top coat," that is bonded onto a thicker film backing and is capable of recording magnetic signals; the top coat consisting of magnetic pigment suspended within a polymer binding that holds the magnetic particles together as well as holding them onto the film backing; the audiotape being sold in bulk in "pancakes" consisting of audiotape wound on a core with no flanges; but excluding any "Type IV" metal audiotape and any audiotape sold by defendants TDK Corporation or TDK Electronics Corporation after June 30, 1995.

3. Counsel for the plaintiff Class and the Aurex Defendants agree to recommend approval of this Settlement Agreement by the Court and by the members of the Class and to undertake their best efforts, including all steps and efforts contemplated by this Settlement Agreement and any other steps and efforts that may be necessary or appropriate, by order of the Court or otherwise, to carry out the terms of this Settlement Agreement.

4. As soon as possible after execution of this Settlement Agreement, plaintiffs' counsel shall submit to the Court a motion for preliminary approval of the settlement contemplated by this Settlement Agreement (the "Settlement") and for a stay of all proceedings in the Class Action against the Aurex Defendants until the Court has completed its consideration of the Settlement and, if the Settlement is approved, has dismissed the action without prejudice. Said motion shall include proposed forms of mail notice and publication notice of the Settlement to members of the Class, approved by the Aurex Defendants (which approval shall not be unreasonably withheld). Plaintiffs' counsel shall request that a decision be made promptly on the papers or that a hearing on their motion for preliminary approval of the Settlement be held at the earliest date available to the Court.

5. In the event that the Court preliminarily approves the Settlement, plaintiffs' counsel shall, as soon thereafter as is reasonably possible, direct to Class members who have been identified by reasonable means notice of the Settlement by first class mail pursuant to Rule 23 of the Federal Rules of Civil Procedure and in accordance with the Court's order of preliminary approval. Notice shall also be given by one-time publication in the national edition of *THE WALL STREET JOURNAL* in accordance with the Court's order of preliminary approval. Subject to paragraph 8 of this Settlement Agreement, prior to this Settlement Agreement becoming final pursuant to paragraph 7 hereof, plaintiffs' counsel may withdraw from the Notice Fund (the escrow account funded by the Aurex Defendants and maintained by Class Counsel) up to \$10,000.00, to the extent

necessary, to pay the reasonable costs of providing the Class such notice as the Court directs.

6. If, after notice to the Class and hearing, the Court approves this Settlement Agreement, then the parties hereto shall jointly seek entry of an order and dismissal without prejudice:

- (a) finally approving this Settlement as being a fair, reasonable and adequate settlement within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation pursuant to its terms;
- (b) directing that, as to the Aurex Defendants, the Class Action and the Complaints be dismissed without prejudice and, except as provided for herein, without costs;
- (c) reserving exclusive jurisdiction over the Settlement and this Settlement Agreement, including the consummation of this Settlement; and
- (d) determining pursuant to Fed. R. Civ. P. 54(b) that there is no just reason for delay and directing that the judgment of dismissal be entered.

7. This Settlement Agreement shall become Final and fully effective upon the occurrence of all of the following three events:

- (a) it is approved in all respects by the Court as required by Rule 23(e) of the Federal Rules of Civil Procedure;
- (b) entry of the dismissal without prejudice (Exhibit A hereto) as to the Aurex Defendants against all members of the Class who have not timely excluded themselves from the Class; and
- (c) the time for appeal or to seek permission to appeal from the Court's approval of this Settlement Agreement as described in (a) hereof and entry of a final judgment as described in (b) hereof has expired or, if appealed, approval of this Settlement Agreement and the order of dismissal without prejudice have been affirmed in their entirety by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review.

8. Except for the amount specified in paragraph 5 above to be paid by the Aurex Defendants for notice costs, the Aurex Defendants shall not be liable for any costs or expenses of the litigation of the Class Action, including without limitation, fees or expenses of any of plaintiffs'

respective experts, advisors, agents and representatives, except costs and expenses incurred in fulfilling the cooperation provisions described in paragraph 10 below. Except as provided in paragraph 5 hereof, in no event shall the Aurex Defendants have any liability with respect to the giving of notice of this Settlement to Class members including, but not limited to, the expense and cost of such notice.

9. Upon this Settlement Agreement becoming Final, the Aurex Defendants shall be dismissed without prejudice. Such dismissal shall become effective no earlier than 75 days following the Court's Final Approval of this Settlement Agreement.

10. Effective upon final approval pursuant to paragraph 7 and subject to the terms of the Confidentiality Order dated October 11, 1999, the Aurex Defendants agree (at their own expense), to cooperate fully with the plaintiffs and their counsel in connection with each of the following matters:

a) Nothing herein is intended: (1) to prevent any current or former officer, employee or agent of the Aurex Defendants from asserting, where appropriate, any Fifth Amendment privilege against self-incrimination or any attorney-client privilege or other privilege held by him in his individual capacity; (2) to require the Aurex Defendants to breach any attorney-client or attorney's work-product relationship they have entered into with any third party as a result of any co-operative defense effort in the proceedings related to the pancake audiotape industry; (3) to require the disclosure of the impressions or thought processes of the Aurex Defendants, or other privileged material of the Aurex Defendants; (4) to extend to any non-parties to this Agreement any of the benefits provided herein for the benefit of plaintiffs; or (5) to prevent plaintiffs from discovering any documents, evidence or information that would otherwise be discoverable under the Federal Rules of Civil Procedure;

b) The Aurex Defendants will make the following persons available for full day interviews and full day videotaped depositions in San Diego, California, or another mutually agreed location, concerning Pancake Audiotape or documents related to Pancake Audiotape, if requested by

plaintiffs' counsel, at mutually agreeable times: Federico Valdes, and two other persons to be designated by plaintiffs' counsel.

c) Aurex Defendants shall produce to Class Counsel, for the period January 1, 1991 to December 31, 1997: all documents, to the extent any exist, reflecting meetings of competitors of Pancake Audiotape or discussions or communications among competitors concerning future prices of Pancake Audiotape or agreements about prices of Pancake Audiotape, but excluding communications between or among them relating to bona fide purchase and sale transactions (i.e., sourcing arrangements) covering Pancake Audiotape.

d) For the period January 1, 1991 to December 31, 1997, all diaries, calendars and expense reports reflecting meetings with competitors, including, but not limited to such documents maintained for Federico Valdes and Carlos Hinojosa; and

e) Upon request, the Aurex Defendants will use their best efforts to obtain and submit to plaintiffs Declarations described in Rules 902(11) and (12) of the Federal Rules of Evidence from Aurex Defendants with respect to their business records designated by plaintiffs that qualify under these rules.

11. If the Court declines to approve this Settlement Agreement or any part hereof, or if such approval is modified or set aside on appeal, or if the Court does not enter the dismissal without prejudice, or if the Court enters the dismissal without prejudice and appellate review is sought, and on such review, such dismissal without prejudice is not affirmed, then this Settlement Agreement shall be canceled and terminated, and shall become null and void.

12. In the event that the Settlement does not become final in accordance with the terms hereof, then this Settlement Agreement shall be of no force or effect and, in any event, the parties hereto agree that this Settlement Agreement, including its exhibits, whether or not it shall become final, and any and all negotiations, documents and discussions associated with it shall be without prejudice to the rights of any party, shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by the Aurex Defendants or of the truth of any of the claims or

allegations contained in the Complaints or any other pleading, and evidence thereof shall not be discoverable or used directly or indirectly, in any way, whether in the Class Action or in any other action or proceeding. The parties expressly reserve all of their defenses and rights if the Settlement does not become final in accordance with the terms of this Settlement Agreement.

13. The execution of this Agreement is without prejudice to Aurex, S.A. de C.V.ís and Auriga Aurex S.A. de C.V.ís positions that they are not subject to the personal jurisdiction of the United States District Court for the Southern District of New York. Execution of this Settlement Agreement is expressly conditioned on the final approval of this Agreement by the Court.

14. The parties hereto and their respective counsel acknowledge and agree that discovery in this action, and the cooperation envisioned by paragraph 10, may involve disclosure of trade secrets and other confidential and proprietary business, technical and financial information. The parties hereto and their respective counsel agree that materials produced pursuant to this Settlement Agreement shall be governed by the Stipulation and Order Concerning Confidentiality of Documents and Materials, dated October 11, 1999.

15. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto. Without limiting the generality of the foregoing, each and every covenant and agreement herein by the class plaintiffs and their counsel shall be binding upon all members of the Class.

16. This Settlement Agreement contains an entire, complete, and integrated statement of each and every term and provision agreed to by and among the parties; it is not subject to any condition not provided for herein. This Settlement Agreement shall not be modified in any respect except by a writing executed by all the parties hereto.

17. Whether or not this Agreement becomes final, the parties expressly agree that this Agreement and its contents, including its exhibits, and any and all statements, negotiations, documents and discussions associated with it, shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or any liability or wrongdoing or of the truth of any of the claims or allegations contained in the complaint in the Class Action or any other pleading. Should Class Counsel determine that disclosure to other parties or publicly of such confidential information is required by Court order, Class Counsel shall provide reasonable notice to counsel for the Aurex Defendants and shall join with the Aurex Defendants, at the Aurex Defendants' option, in seeking a superceding Court Order preventing such disclosure.

18. Any inconsistency between this Settlement Agreement and the exhibits attached hereto shall be resolved in favor of this Settlement Agreement.

19. None of the parties hereto shall be considered to be the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

20. All terms of this Settlement Agreement and the exhibits hereto shall be governed by and interpreted according to the substantive laws of the State of New York without regard to its choice of law or conflict of laws principles.

21. The undersigned counsel for the parties to this Settlement Agreement covenant and represent that they are fully authorized to enter into and to execute this Settlement Agreement.

22. This Settlement Agreement may be executed in counterparts. Facsimile signatures shall be considered as valid signatures as of the date hereof.

Dated: January \_\_\_\_\_, 2003

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