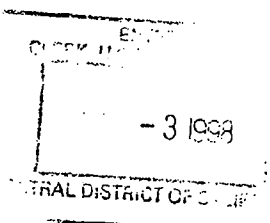
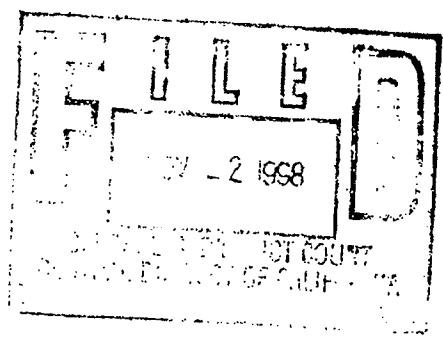


Exhibit E

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BARBARA ALLBUT BROWN, et al.,
Plaintiffs,
vs.
POLYGRAM RECORDS, et al.,
Defendants.

CASE NO. CV 98-5381 DT (RZx)
ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS PLAINTIFFS'
FIRST AMENDED COMPLAINT

I. Background

A. Factual Summary

This case involves claims brought by Plaintiffs Barbara Allbut Brown ("Brown"), Peggy Santiglia Davison ("Davison"), and Phyllis Allbut Sirico, ("Sirico") (collectively "Plaintiffs") against Polygram Records ("Polygram"), Mercury Records, Inc. ("Mercury") and FGG Productions, Inc. ("FGG") (collectively "Defendants") for damages and injunctive and declaratory relief

1 in connection with the use of the name "The Angels," which is the
2 professional name under which the Plaintiffs performed as a
3 singing group. The causes of action contained in Plaintiffs'
4 First Amended Complaint are as follows:

5 (1) The first cause of action is by Davison and Sirico for
6 infringement of a registered trademark against all Defendants;

7 (2) The second cause of action is by all Plaintiffs for
8 false designations and descriptions against all Defendants;

9 (3) The third cause of action is by all Plaintiffs for
10 unfair competition against all Defendants;

11 (4) The fourth cause of action is by Brown and Sirico for
12 breach of contract against FGG;

13 (5) The fifth cause of action is by Brown and Sirico for
14 rescission against FGG;

15 (6) The sixth cause of action is by all Plaintiffs for
16 constructive trust against FGG;

17 (7) The seventh cause of action is by all Plaintiffs for
18 accounting against all Defendants;

19 (8) The eighth cause of action is by all Plaintiffs for
20 fraud against FGG;

21 (9) The ninth cause of action is by Davison for conversion
22 against all Defendants;

23 (10) The tenth cause of action is by Davison for trespass
24 to chattel against all Defendants; and

25 (11) The eleventh cause of action is by all Plaintiffs for
26 declaratory relief against all Defendants.

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1 Plaintiffs allege that on or about March 25, 1963,
2 Brown and Sirico entered into a contract with Sabina Records
3 ("Sabina Contract") under which all musical records and tapes
4 recorded by Brown and Sirico would become the property of Sabina
5 Records. In return, Sabina Records would pay Brown and Sirico
6 specified royalties of all records sold by Sabina records or any
7 affiliate or licensee. Amended Complaint at ¶ 15. The Sabina
8 Contract also provided that it was to be interpreted under the
9 laws of the State of New York. *Id.* at ¶ 14. On or about March
10 25, 1963, after execution of the Sabina Contract, Sabina Records
11 assigned its rights in the Sabina Contract to FGG. *Id.* at ¶ 18.

12 Plaintiffs state that Davison was never a party to the
13 Sabina Contract, but sometime in 1963, Davison joined the group
14 "The Angels" and took part in recording songs, including "My
15 Boyfriend's Back." *Id.* at ¶ 19. "My Boyfriend's Back" became
16 Mercury's largest album hit. Plaintiffs' Opposition at 1.

17 Plaintiffs allege that on or about June 13, 1963, Brown
18 and Sirico signed a contract with FGG ("FGG Contract") under
19 which FGG would pay Brown and Sirico specified royalties based on
20 sales of Brown and Sirico's recordings.¹ *Id.* at ¶ 20. The FGG
21

22
23 Plaintiffs did not attach the Sabina Contract or the FGG
24 Contract to their First Amended Complaint. However, Defendants
25 submitted a copy of the Sabina Contract with their motion to
26 dismiss. They represent that they requested a copy of the Sabina
27 Contract from Plaintiffs and that Plaintiffs gave them a copy of
28 the Sabina Contract but that page 10 is missing and Plaintiffs
have been unable to locate page 10. Defendants also represent
that neither party has been able to locate a copy of the FGG
Contract.

1 Contract also provided that it was to be interpreted under the
2 laws of the State of New York. *Id.* Subsequently, in June 1963,
3 FGG granted Mercury and/or Phonogram "the exclusive and
4 perpetual rights" to the master recordings of, and the use of,
5 the compositions and performances recorded by Brown and Sirico,
6 including but not limited to, "My Boyfriend's Back." *Id.* at ¶
7 21. At some unspecified time, PolyGram became the successor-in-
8 interest to Mercury and Phonogram and assumed all the rights and
9 obligations under the agreements with FGG. *Id.* at ¶ 22.

10 Plaintiffs allege that they did not receive any royalty
11 payments since receiving an initial payment in the early 1960's.
12 *Id.* at ¶ 23.

13 On January 17, 1995, the United States Trademark and
14 Patent Office issued a service mark registration of the name "The
15 Angels," to Plaintiffs Sirico and Davison. Exhibit "A" attached
16 to Amended Complaint.

17 **B. Procedural Summary**

18 On July 6, 1998, Plaintiffs filed the Complaint for
19 Damages and for Injunctive and Declaratory Relief.

20 On August 6, 1998, Plaintiffs filed a Notice of
21 Voluntary Dismissal Without Prejudice as to Defendant Mason &
22 Company, which this Court granted on August 10, 1998.

23 On August 26, 1998, Plaintiffs filed the First Amended
24 Complaint ("Complaint").

25 On September 17, 1998, Defendants filed a Notice of
26 Motion and Motion to Dismiss Plaintiffs' First Amended Complaint,
27

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