

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

MITCHELL S. WARSTADT, et al., On Behalf
of Themselves and All Others Similarly
Situating,

Plaintiffs,

vs.

HASTINGS ENTERTAINMENT, INC., et al.,

Defendants.

FRANK M. DAUGHERTY, On Behalf of
Himself and All Others Similarly Situated,

Plaintiff,

vs.

HASTINGS ENTERTAINMENT, INC., et al.,

Defendants.

§ Civil Action No. 2:00-CV-089-J
§ **(Consolidated with actions: 2:00-CV-131;**
§ **2:00-CV-153; 2:00-CV-157; 2:00-CV-158)**

§ CLASS ACTION

§ Civil Action No 2:00-CV-160 J

§ CLASS ACTION

**AMENDED STIPULATION OF SETTLEMENT
AND SETTLEMENT AGREEMENT**

This Amended Stipulation of Settlement and Settlement Agreement, dated as of January 8, 2003 (the "Stipulation and Agreement"), is made and entered into by and among the following Settling Parties (as defined further in Section IV hereof): (i) the Representative Plaintiffs (on behalf of themselves and each of the Settlement Class Members), by and through Co-Lead Counsel of record in the Actions; (ii) the Defendants, by and through their counsel of record in the Actions, and (iii) KPMG, LLP ("KPMG") by and through its counsel. The Stipulation and Agreement is intended by the Settling Parties to fully, finally and forever resolve, discharge and settle the Released Claims (as defined in ¶1.22 hereof), upon and subject to the terms and conditions hereof and, with regard to the Settlement with Defendants as those terms and conditions are reflected herein subject to the terms and conditions of the October Stipulation (as that term is defined herein).

I. THE ACTIONS

On and after March 14, 2000, the following actions (collectively, the "*Warstadt* Action") were filed in the United States District Court for the Northern District of Texas, as securities class actions on behalf of purchasers of shares of Hastings Entertainment, Inc. ("Hastings" or the "Company") common stock during defined periods of time:

1. *Warstadt v. Hastings Entertainment, Inc., et al.*, Case No. 2-00CV-089-J;
2. *Caudle v. Hastings Entertainment, Inc., et al.*, Case No. 3-00CV-0598-J;
3. *Tempia v. Hastings Entertainment, Inc., et al.*, Case No. 3-00CV-0608-J;
4. *Dandrea v. Hastings Entertainment, Inc., et al.*, Case No. 3-00CV-0760-J; and
5. *Scriber v. Hastings Entertainment, Inc., et al.*, Case No. 2-00CV-00131-J.

On June 22, 2000, the Court consolidated the five cases for all purposes. The operative complaint (the "*Warstadt* Complaint") is the Consolidated Class-Action Complaint for Violation of the Federal Securities Laws filed on October 27, 2000. The Complaint alleges claims against the defendants named therein for violations of §§10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder.

On August 3, 2000, the Court appointed Lead Plaintiffs under §21D(a)(3)(B) of the Exchange Act and approved Lead Plaintiffs' selection of Milberg Weiss Bershad Hynes & Lerach LLP as Lead Counsel pursuant to §21D(a)(3)(B)(v) of the Exchange Act.

On May 15, 2000, Frank M. Daugherty filed a complaint in the United States District Court for the Northern District of Texas as a securities class action alleging violations of §§11, 12 and 15 of the Securities Act of 1933 (the "*Daugherty Action*"). On August 3, 2000, the Court appointed Lead Plaintiff under §21D(a)(3)(B) of the Securities Act, and approved Lead Plaintiff's selection of Weiss & Yourman as Lead Counsel.

On July 8, 2002, plaintiffs in the *Warstadt* Action filed a motion to amend the complaint to add KPMG as a party defendant; that motion was denied by the Court on July 30, 2002.

Representative Plaintiffs and Defendants have agreed to request the Court to consolidate the *Warstadt* and *Daugherty* Actions for purposes of this Settlement.

Prior to execution of this Stipulation and Agreement, the Defendants and Representative Plaintiffs reached an agreement to settle that was memorialized in the Stipulation of Settlement filed with the Court on October 28, 2002 ("October Stipulation"). The October Stipulation was conditioned on, among other things, approval by the Court, but otherwise reflected a binding agreement to settle the Actions against the Defendants. As consideration for the settlement of the Actions, the October Stipulation provided in paragraph 2.1 that a Settlement Fund would be established with a payment to the Escrow Agent of \$5,750,000 by Hastings or its insurer on behalf of the Defendants. As additional consideration, paragraph 2.2 of the October Stipulation contained an assignment of certain potential claims against KPMG (defined in the October Stipulation as the "Auditor Claims") by Hastings to the Settlement Class. The October Stipulation also contained an indemnification (as defined in paragraphs 2.3 and 2.4 of the October Stipulation) and a duty to cooperate (as defined in paragraph 2.6 of the October Stipulation) related to the Auditor Claims. Before the filing of the October Stipulation, Representative Plaintiffs and KPMG reached an agreement in principle to settle any potential claims (including the Auditor Claims) that the proposed Settlement Class might have had against KPMG. As consideration for that settlement, KPMG agreed to pay \$600,000 to the Escrow Agents to increase the Settlement Fund to \$6,350,000.

Pursuant to the Court's order, the October Stipulation was filed with the Court before Representative Plaintiffs and KPMG had memorialized the terms of their settlement. This Stipulation and Agreement is prepared to reflect the binding terms of the October Stipulation and, in addition, the terms of the settlement between KPMG and Representative Plaintiffs.

II. NON-ADMISSION OF WRONGDOING OR LIABILITY

A. Defendants

Defendants believe that the claims asserted in the Actions have no merit and Defendants have vigorously contested the claims in pleadings before the Court in both Actions and have asserted defenses to any liability. Defendants believe that the discovery taken in the Actions, as well as the reports of experts retained by Defendants, have supported Defendants' defenses.

Nonetheless, the Defendants have concluded that further conduct of the Actions would be protracted and expensive, and that it is desirable that the Actions be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation and Agreement. The Defendants also have taken into account the uncertainty and risks inherent in any litigation, especially in complex cases like these Actions. The Defendants have, therefore, determined that it is desirable and beneficial to them that the Actions be settled in the manner and upon the terms and conditions set forth in this Stipulation and Agreement. However, Defendants continue to deny any liability for the claims asserted in the Actions and nothing in this Stipulation and Agreement is intended, or should be construed, as an admission of liability or concession with respect to any such claims and contentions that were alleged by the Representative Plaintiffs in the Actions, including without limitation, any charges of wrongdoing or liability against the Defendants arising out of any conduct, statements, acts or omissions alleged, or that could have been alleged in the Actions, and also including, without limitation, any allegations that the Representative Plaintiffs or the Class have suffered damage, that the price of Hastings common stock was artificially inflated by reasons of alleged misrepresentations, non-disclosures or otherwise, or that the Representative Plaintiffs, or the Class were harmed by any conduct that was alleged or could have been alleged in the Actions.

B. KPMG

KPMG believes that no meritorious claims could have been asserted against it in the Actions and that it would have had meritorious defenses to any claim of liability.

Nonetheless, KPMG has concluded that the defense of claims that might be asserted against it in the Actions would be protracted and expensive, and that it is desirable that any potential claims that could have been asserted against KPMG by Representative Plaintiffs and/or the Settlement Class in the Actions be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation and Agreement. KPMG also has taken into account the uncertainty and risks inherent in any litigation, especially in complex cases like these Actions. KPMG has, therefore, determined that it is desirable and beneficial to it that any potential claims that could have been asserted against KPMG by Representative Plaintiffs and/or the Settlement Class be settled in the manner and upon the terms and conditions set forth in this Stipulation and Agreement. However, KPMG continues to deny any liability for any potential claims, and nothing in this Stipulation and Agreement is intended, or should be construed, as an admission or concession with respect to any such claims and contentions that were or could have been alleged by the Representative Plaintiffs in the Actions, including without limitation any charges of wrongdoing or liability against KPMG arising out of any conduct, statements, acts or omissions alleged, or that could have been alleged in the Actions, and also including without limitation, any allegations that the Representative Plaintiffs or the Class or any of the Defendants have suffered damage, that the price of Hastings common stock was artificially inflated by reasons of alleged misrepresentations, non-disclosures or otherwise, that KPMG was negligent, or that the Representative Plaintiffs, the Class or any of the Defendants were harmed by any conduct that was alleged or could have been alleged in the Actions.

III. CLAIMS OF THE REPRESENTATIVE PLAINTIFFS AND BENEFITS OF SETTLEMENT

The Actions were aggressively litigated by all parties to the Actions. The parties to the Actions briefed motions to dismiss and for class certification, as well as numerous discovery motions. Counsel for the plaintiffs have conducted extensive formal and informal discovery and

investigation during the development and prosecution of the Actions. This discovery and investigation has included, *inter alia*, (i) inspection and analysis of over 4,000 boxes of documents produced by, or otherwise relating to, Hastings and KPMG; (ii) the taking and defending of 14 depositions; (iii) interviews with other witnesses with knowledge about Hastings, and KPMG and/or plaintiffs' allegations; (iv) consultation with experts in the fields of damages, accounting and investment banking, as well as the preparation and review of expert reports; and (v) research of the applicable law with respect to the claims asserted in the complaints filed in the Actions and potential defenses thereto. An additional 18 depositions were scheduled at the time the settlement was reached. Plaintiffs' counsel also prepared an extensive proposed amended complaint naming KPMG as a defendant in the *Warstadt* Action, and filed an unsuccessful motion to amend their complaint in that Action to assert claims against KPMG.

Representative Plaintiffs believe that the claims asserted in the Actions and the claims they sought to assert against KPMG have merit, and that the evidence developed to date supports the claims. However, counsel for the Representative Plaintiffs recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Actions against the Defendants, and to prosecute potential claims against KPMG, through trial and through appeals. Counsel for the Representative Plaintiffs also have taken into account the uncertain outcome and the risk of any litigation, especially in complex cases such as these Actions, as well as the difficulties and delays inherent in such litigation. Counsel for the Representative Plaintiffs also are mindful of the inherent problems of proof under, and possible defenses to, the claims asserted and sought to be asserted in the Actions, and have further considered the size and financial assets of Hastings and the vigorous defense that KPMG would mount. Counsel for the Representative Plaintiffs believe that the settlement set forth in this Stipulation and Agreement confers substantial benefits upon the Settlement Class.

Based on their evaluation, counsel for the Representative Plaintiffs have determined that the settlement set forth in this Stipulation and Agreement is in the best interests of the Representative Plaintiffs and the Settlement Class.

IV. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among each of the Lead Plaintiffs (for themselves and on behalf of the Settlement Class Members), the Defendants, and KPMG, by and through their respective counsel or attorneys of record, that, subject to the occurrence of the events and conditions set forth in ¶7.1 below, the Actions and the Released Claims shall be finally and fully compromised, settled and released, and the Actions shall be dismissed with prejudice, as to all Settling Parties, upon and subject to the terms and conditions of this Stipulation and Agreement.

1. Definitions

Terms that are defined elsewhere within this Stipulation and Agreement shall be defined as such regardless of whether a separate definition is included or restated in this Section. As used in this Stipulation and Agreement, the following terms have the meanings specified below:

1.1 "Actions" means the *Warstadt* Action and the *Daugherty* Action, which the parties have agreed shall be consolidated solely for purposes of this Settlement.

1.2 "Authorized Claimant" means any Settlement Class Member whose claim for recovery has been allowed pursuant to the terms of this Stipulation and Agreement.

1.3 "Claimant" means any Settlement Class Member who files a Proof of Claim in such form and manner, and within such time, as the Court shall prescribe.

1.4 "Claims Administrator" means the firm of Gilardi & Co. LLC.

1.5 "Class" means all Persons (except Defendants, present and former executive officers and directors of Defendants and/or their subsidiaries, members of the immediate family of the Individual Defendants, any entity in which any Defendant has a controlling interest, and the legal representatives, heirs, successors, or assigns of any such excluded party, and KPMG) who purchased Hastings common stock during the period from June 12, 1998 through May 2, 2000, inclusive, excluding those persons who timely and validly request exclusion from the Settlement Class pursuant to the "Notice of Pendency and Proposed Settlement of Class Actions" to be sent to the Class.

1.6 "Class Period" means the period commencing on June 12, 1998 through May 2, 2000, inclusive.

1.7 "Class Member" or "Member of the Class" mean a Person who falls within the definition of the Class as set forth in ¶1.5 of this Stipulation and Agreement.

1.8 "Defendants" means Hastings Entertainment, Inc., John Marmaduke, Dennis McGill, Phillip Hill, Leonard Berry, Peter Dallas, Gaines Godfrey, Craig Lentzsch, Stephen Marmaduke, Jeffrey Shrader, Ron Stegall, Salomon Smith Barney, Inc., A.G. Edwards & Sons, Inc., and Furman Selz LLC.

1.9 "DSP" means Defendants' settlement payment to the Settlement Class in the principal amount of Five Million Seven Hundred and Fifty Thousand Dollars (\$5,750,000) to be paid in the manner described below with respect to the Settlement Fund.

1.10 "Effective Date" means the first date by which all of the events and conditions specified in ¶7.1 of this Stipulation and Agreement have been met and have occurred.

1.11 "Escrow Agents" means the law firms of Milberg Weiss Bershad Hynes & Lerach LLP and Weiss & Yourman.

1.12 "Final" means when the last of the following with respect to the Judgment approving this Stipulation and Agreement, substantially in the form of Exhibit B hereto, shall occur: (i) the expiration of three (3) business days after the time to file a motion to alter or amend the Judgment under Federal Rule of Civil Procedure 59(e) has passed without any such motion having been filed; (ii) the expiration of three (3) business days after the time in which to appeal the Judgment has passed without any appeal having been taken; and (iii) if such motion to alter or amend is filed or if an appeal is taken, three (3) business days after the conclusive determination of any and all such motions and/or appeals in such a manner as to permit the consummation of the settlement substantially in accordance with the terms and conditions of this Stipulation and Agreement. For purposes of this paragraph, an "appeal" shall include any petition for a writ of certiorari or other writ that may be filed in connection with approval or disapproval of this settlement, but shall not include any appeal which concerns only the issue of attorneys' fees and reimbursement of costs and

disbursements awarded to Representative Plaintiffs' Counsel or any plan of allocation of the Settlement Fund, as hereinafter defined.

1.13 "Hastings Defendants" means Hastings and the Individual Defendants.

1.14 "Individual Defendants" means John Marmaduke, Dennis McGill, Phillip Hill, Leonard Berry, Peter Dallas, Gaines L. Godfrey, Craig Lentzsch, Stephen Marmaduke, Jeffrey Shrader and Ron Stegall.

1.15 "Judgment" means the judgment and order of dismissal with prejudice to be rendered by the Court, substantially in the form attached hereto as Exhibit B.

1.16 "KPMG" means KPMG, LLP and its predecessor firms and any successor firm(s).

1.17 "KSP" means KPMG's settlement payment to the Settlement Class in the principal amount of Six Hundred Thousand Dollars (\$600,000) to be paid in the manner described below with respect to the Settlement Fund.

1.18 "Person" means an individual, natural person, corporation, partnership, limited partnership, association, joint stock company, joint venture, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assignees.

1.19 "Plaintiffs' Settlement Counsel" means Keith F. Park, Ellen Gusikoff Stewart, Milberg Weiss Bershad Hynes & Lerach LLP, 401 B Street, Suite 1700, San Diego, California, 92101, Telephone (619) 231-1058; and Joseph H. Weiss, Weiss & Yourman, 551 Fifth Avenue, Suite 1600, New York, NY 10176, Telephone (212) 682-3025.

1.20 "Plan of Allocation" means a plan or formula of allocation of the Settlement Fund whereby the Settlement Fund shall be distributed to Authorized Claimants after payment of such attorneys' fees, expenses and interest as may be awarded by the Court, expenses of notice and administration of the settlement, Taxes and Tax Expenses. Any Plan of Allocation is not part of the Stipulation and Agreement and neither Defendants, KPMG, nor the Related Parties shall have any responsibility or liability with respect thereto.

1.21 "Related Parties" means each of a Defendant's and KPMG's past or present directors, officers, employees, partners, general partners, limited partners, members, principals, agents, benefit plans, administrators, underwriters (including specifically each underwriter identified in the Prospectus for the initial public offering of Hastings shares dated June 11, 1998), insurers, co-insurers, reinsurers, controlling shareholders, attorneys, accountants or auditors (excluding KPMG), banks or investment banks, associates, personal or legal representatives, predecessors, successors, parents, subsidiaries, divisions, joint ventures, assigns, privies, spouses, heirs, related or affiliated entities, any entity in which a Defendant or KPMG has a controlling interest, any members of their immediate families, or any trust of which any Defendant is the settlor or which is for the benefit of any Defendant and/or member(s) of his family. With respect to Furman Selz LLC, "Related Parties" shall specifically include, but is not limited to, ING Baring Furman Selz LLC, ING Barings LLC, ING Merger LLC, ING Financial Holdings Corp., ABN AMRO Securities LLC, and ABN AMRO Incorporated.

1.22 "Released Claims" shall collectively mean: (i) for purposes of the settlement between Defendants and the Representative Plaintiffs and/or Settlement Class Members, any and all claims (including Unknown Claims as defined in ¶1.30 hereof), demands, rights, liabilities and causes of action of every nature and description whatsoever, known or unknown, whether or not concealed or hidden, that were asserted in the Actions or that could have been asserted during the pendency of the Actions by any of the Representative Plaintiffs and/or Settlement Class Members against any of the Defendants and/or the Related Parties arising out of, based upon or related in any manner whatsoever to the purchase of Hastings common stock by the Representative Plaintiffs and/or Settlement Class Members during the Class Period and any of the facts, transactions, events, occurrences, acts, disclosures, statements, omissions or failures to act which were or could have been alleged in the Actions; and (ii) for purposes of the settlement between KPMG and the Representative Plaintiffs and/or Settlement Class Members, any and all claims (including Unknown Claims as defined in ¶1.30 hereof), demands, rights, liabilities and causes of action of every nature and description whatsoever, known or unknown, whether or not concealed or hidden, that were asserted in the Actions or that could have been asserted during the pendency of the Actions by any of the

Representative Plaintiffs and/or Settlement Class Members against KPMG and/or the Related Parties arising out of, based upon or related in any manner whatsoever to (a) the purchase of Hastings common stock by the Representative Plaintiffs and/or Settlement Class Members during the Class Period and any of the facts, transactions, events, occurrences, acts, disclosures, statements, omissions or failures to act which were or could have been alleged in the Actions, and/or (b) any and all professional services rendered by KPMG to Hastings related to the subject matter of the Actions, including but not limited to the Auditor Claims (defined herein) and any claim for malpractice, negligence, negligent misrepresentation, breach of contract, breach of fiduciary duty, fraud and violations of state and/or federal securities laws, or any other claim or cause of action whatsoever.

1.23 "Released Persons" means each and all of the Defendants, KPMG and the Related Parties.

1.24 "Representative Plaintiffs" means each plaintiff who moved the Court for appointment as a Class Representative.

1.25 "Representative Plaintiffs' Counsel" means counsel who have appeared on behalf of Representative Plaintiffs in the Actions.

1.26 "Settlement Class" or "Settlement Class Member" consists of or means any Class Member who does not timely and validly request exclusion from the Class as defined in ¶1.5 hereof.

1.27 "Settlement Fund" means the principal amount of Six Million Three Hundred and Fifty Thousand Dollars (\$6,350,000) in cash to be paid by wire transfer to an interest-bearing account maintained by the Escrow Agents pursuant to ¶2.1 of this Stipulation and Agreement, plus earnings thereon upon and after receipt by the Escrow Agents. The Escrow Agents shall invest the cash received and all earnings thereon shall be for the benefit of the Settlement Fund.

1.28 "Settling Parties" means, collectively, each of the Defendants, KPMG and the Representative Plaintiffs on behalf of themselves and the Settlement Class Members.

1.29 "Underwriter Defendants" means Salomon Smith Barney, Inc., A.G. Edwards & Sons, Inc., and Furman Selz LLC.

1.30 "Unknown Claims" means any Released Claims which any of the Representative Plaintiffs and/or Settlement Class Members do not know or suspect to exist in his, her or its favor

at the time of the release of the Released Persons which, if known by him, her or it, might have affected his, her or its settlement with and release of the Released Persons, or might have affected his, her or its decision not to object to this settlement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date, the Representative Plaintiffs shall expressly, and each of the Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived the provisions, rights and benefits of California Civil Code §1542 (to the extent it applies to the Actions), which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Upon the Effective Date, the Representative Plaintiffs and each of the Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law or international or foreign law, which is similar, comparable or equivalent in effect to California Civil Code §1542. The Representative Plaintiffs and Settlement Class Members may hereafter discover facts in addition to or different from those which he, she or it now knows or believes to be true with respect to the subject matter of the Released Claims, but the Representative Plaintiffs shall expressly and each Settlement Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. Defendants, KPMG and the Representative Plaintiffs acknowledge, and the Settlement Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and is a key element of the settlement of which this release is a part.

2. The Settlement

a. The Settlement Fund

2.1 The KSP and the DSP combined, in cash, plus any earnings thereon, shall constitute the Settlement Fund. The Settlement Fund shall be transferred to an interest-bearing account maintained by the Escrow Agents by Hastings or its insurer on behalf of all Defendants (in the form of the DSP) and by KPMG (in the form of the KSP) no later than 10 calendar days after preliminary approval of the settlement. In the event of noncompliance with the obligation set forth in the preceding sentence, Plaintiffs' Settlement Counsel may, in their discretion, either: (a) terminate the settlement by written notice or (b) require interest to be paid upon the outstanding amount(s) of the Settlement Fund by the non-complying party or parties, at the rate of 10% per annum beginning from the date the payment was due until such outstanding amount(s) is/are paid.

b. Additional Consideration for the Settlement

2.2 As additional consideration for the settlement, Hastings hereby agrees to and does assign to the Settlement Class, to the extent they exist, any causes of action and/or claims against KPMG arising out of the services that KPMG provided to Hastings and with respect to the claims asserted in the Actions (the "Auditor Claims"). Hastings has made no representations or warranties to the Settlement Class or counsel therefor regarding any causes of action and/or claims against KPMG that Hastings is assigning to the Settlement Class. Hastings agrees that the Representative Plaintiffs may choose to bring an action in Hastings' name against KPMG if such action asserts the claims against KPMG that are being assigned herein. Any recovery obtained against KPMG in such action will belong exclusively to the Settlement Class, except as provided in ¶2.3. If this Settlement is approved by the Court, the claims assigned pursuant to this ¶2.2 shall be released as Released Claims pursuant to ¶¶1.22 and 4.1 of this Stipulation and Agreement and no Auditor Claims shall be pursued by any Representative Plaintiff, or any members of the Settlement Class.

2.3 In the event Representative Plaintiffs determine to assert any of the Auditor Claims against KPMG, Representative Plaintiffs agree that any recovery by Representative Plaintiffs for the Class on the Auditor Claims shall be reduced by the proportionate share of fault that the trier of fact shall allocate or apportion to Defendants so as to extinguish any contribution, indemnity,

apportionment or other similar rights that KPMG might otherwise arguably have against the Defendants. Representative Plaintiffs agree to use their best efforts to seek such a determination of proportionate shares of fault in any proceeding in which they elect to pursue any Auditor Claims.

2.4 In the event Representative Plaintiffs assert any Auditor Claims and, as a result thereof, claims are made by KPMG, against Defendants for, or any recovery by Representative Plaintiffs on such Auditor Claims requires Defendants to pay any amount of such recovery to Representative Plaintiffs or to KPMG by way of contribution, indemnity, apportionment or other similar right, Representative Plaintiffs, to the fullest extent permitted by law, agree to indemnify, save harmless and pay all judgments and claims sustained by Defendants not extinguished as contemplated in ¶2.3 and all liabilities, expenses and amounts paid in defense or settlement of any such claims, including costs and attorneys' fees.

2.5 The settlement set forth in this Stipulation and Agreement is not conditioned upon Hastings obtaining a release from KPMG or any of its predecessors or successors.

2.6 Hastings agrees that it will respond in good faith to reasonable requests for cooperation from Representative Plaintiffs' Counsel if Auditor Claims are pursued. However, Hastings retains in its sole discretion, the right to determine in good faith whether or not requests for cooperation are reasonable and its determinations in this regard shall not be grounds for any action under this Stipulation or otherwise. This agreement to cooperate is limited to Hastings and no agreement to cooperate is made by any of the other Defendants in the Actions. All Defendants expressly retain and do not waive any claim of attorney-client privilege, attorney work-product, joint defense doctrine (or other applicable privilege) with regard to the subject matter of the action referred to in ¶2.2 above or the Actions and no agreement is made to produce or make available any documents and/or information that is and/or was protected from disclosure during the conduct of the Actions, without an order of the Court. Hastings agrees to make available, upon reasonable notice, individuals who are presently within the employ of the Company for deposition without the necessity of a subpoena. Further, Hastings agrees that it will produce upon reasonable notice any remaining copies of electronic documents that were prepared for production prior to the agreement to settle the Actions. Hastings does not agree to produce any additional documents as a condition of this

Agreement, but it is willing, in its sole discretion, to consider reasonable requests for information, upon reasonable notice, from Representative Plaintiffs' Counsel, but only subject to payment by Representative Plaintiffs' Counsel for any costs incurred by Hastings for collection, copying and/or review of such documents. Hastings' exercise of its discretion to respond to requests for cooperation, beyond the issue resolution mechanism provided for below, shall not be grounds for any action under this Stipulation or otherwise. Notwithstanding any of the foregoing, if, after the exercise of good faith by both parties there remains a disagreement regarding the performance of any of the parties in accordance with this ¶2.6, the parties agree that George Whittenburg and Jeffrey Shrader will meet and confer and attempt to resolve the dispute. If they are unable to resolve the dispute, they agree to utilize the services of an independent, disinterested lawyer to resolve the outstanding issue.

c. The Escrow Agents

2.7 The Escrow Agents shall invest the Settlement Fund deposited pursuant to ¶2.1 above in instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then-current market rates.

2.8 The Escrow Agents shall not disburse the Settlement Fund except as provided in this Stipulation and Agreement, by an order of the Court, or with the written agreement of counsel for Defendants (with respect to the DSP), KPMG (with respect to the KSP) and Plaintiffs' Settlement Counsel (with respect to both the DSP and the KSP).

2.9 Subject to further order and/or directions as may be made by the Court, the Escrow Agents are authorized to execute such transactions on behalf of the Class Members as are consistent with the terms of this Stipulation and Agreement.

2.10 All funds held by the Escrow Agents shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to this Stipulation and Agreement and/or further order(s) of the Court.

2.11 Within ten (10) days after payment of the Settlement Fund to the Escrow Agents pursuant to ¶2.1 hereof, the Escrow Agents may establish a "Class Notice and Administration Fund,"

and may deposit up to \$100,000 from the Settlement Fund in it. The Class Notice and Administration Fund may be used by Plaintiffs' Settlement Counsel to pay costs and expenses reasonably and actually incurred in connection with providing notice to the Class, locating Class Members, soliciting Class claims, assisting with the filing of claims, administering and distributing the Settlement Fund to Authorized Claimants, processing Proof of Claim and Release forms and paying escrow fees and costs, if any. The Class Notice and Administration Fund may also be invested and earn interest as provided for in ¶2.7 of this Stipulation and Agreement. Any unused portion of the Class Notice and Administration Fund shall be returned to the Settlement Fund.

d. Taxes

2.12 (a) Settling Parties and the Escrow Agents agree to treat the Settlement Fund as being at all times a "qualified settlement fund" within the meaning of Treas. Reg. Sec. 1.468B-1. In addition, the Escrow Agents shall timely make such elections as necessary or advisable to carry out the provisions of this ¶2.12, including the "relation-back election" (as defined in Treas. Reg. Sec. 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agents to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

(b) For the purpose of §468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the "administrator" shall be the Escrow Agents. The Escrow Agents shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treas. Reg. Sec. 1.468B-2(k)). Such returns (as well as the election described in ¶2.12(a) hereof) shall be consistent with this ¶2.12 and in all events shall reflect that all Taxes (including any estimated Taxes, interest or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in ¶2.12(c) hereof.

(c) All (i) Taxes as defined below (including any estimated Taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, including any Taxes or tax detriments that may be imposed upon the Defendants, KPMG, the Related Parties or counsel for

any of them with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a "qualified settlement fund" for federal or state income tax purposes ("Taxes"), and (ii) expenses and costs incurred in connection with the operation and implementation of this ¶2.12 (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this ¶2.12) ("Tax Expenses"), shall be paid out of the Settlement Fund; in all events the Defendants, KPMG, the Related Parties and counsel for each of them shall have no liability or responsibility for the Taxes or the Tax Expenses or the filing of any tax returns or other documents with the Internal Revenue Service or any other State or Local taxing authority. The Escrow Agents shall indemnify and hold each of the Defendants, KPMG, the Related Parties and counsel for each of them harmless for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification). Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund and shall be timely paid by the Escrow Agents out of the Settlement Fund without prior order from the Court, and the Escrow Agents shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such amounts including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. §1.468B-2(l)(2)); neither the Defendants, KPMG, the Related Parties nor counsel for any of them are responsible nor shall they have any liability therefor or for any reporting requirements that may relate thereto. The parties hereto agree to cooperate with the Escrow Agents, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this ¶2.12.

(d) For the purpose of this ¶2.12 and of ¶2.13, references to the Settlement Fund shall include both the Settlement Fund and the Class Notice and Administration Fund and shall also include any earnings thereon.

e. Termination of Settlement

2.13 In the event that this Stipulation and Agreement is not approved, or is terminated, canceled, or fails to become effective for any reason, the Settlement Fund less expenses actually

incurred or due and owing pursuant to ¶2.11 and ¶2.12, allocated in a *pro rata* manner to the DSP and KSP, shall be refunded to the Hastings Defendants and/or their insurers (in the form of the DSP) and KPMG (in the form of the KSP) and/or their designees as described in ¶7.5 below.

3. Notice Order and Settlement Hearing

3.1 Within five (5) business days after execution of this Stipulation and Agreement, Plaintiffs' Settlement Counsel shall submit this Stipulation and Agreement together with its Exhibits to the Court and shall apply for entry of an order (the "Notice Order"), substantially in the form of Exhibit A attached hereto, providing for, *inter alia*, the certification of a class for the purpose of the settlement, the consolidation of the *Warstadt* and *Daugherty* Actions for the purpose of the settlement, the preliminary approval of the settlement set forth in this Stipulation and Agreement, and approval for the mailing and publication of a settlement notice (the "Notice" and the "Summary Notice"), substantially in the form of Exhibits A-1 and A-3 hereto, which shall include the general terms of the settlement set forth in this Stipulation and Agreement, the proposed Plan of Allocation, the general terms of the Fee and Expense Application as defined in ¶6.1 hereof and the date of the Settlement Hearing as defined below.

3.2 Plaintiffs' Settlement Counsel shall request that after notice is given, the Court hold a hearing (the "Settlement Hearing") and approve the settlement of the Actions and the Released Claims as set forth herein. At or after the Settlement Hearing, Plaintiffs' Settlement Counsel also will request that the Court approve the proposed Plan of Allocation and the Fee and Expense Application.

4. Releases

4.1 Upon the Effective Date, as defined in ¶1.10 hereof, the Representative Plaintiffs and each of the Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished and discharged all Released Claims against each and all of the Released Persons, whether or not such Settlement Class Member executes and delivers the Proof of Claim and Release.

4.2 Only those Settlement Class Members filing valid and timely Proof of Claim and Release forms shall be entitled to participate in the settlement and receive a distribution from the

Settlement Fund. The Proof of Claim and Release to be executed by Settlement Class Members shall release all Released Claims against the Released Persons and shall be substantially in the form contained in Exhibit A-2 hereto. All Settlement Class Members shall be bound by the releases set forth in this §IV.4 whether or not they submit a valid and timely Proof of Claim and Release.

4.3 Upon the Effective Date, as defined in ¶1.10 hereof, each of the Released Persons shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished and discharged each and all of the Representative Plaintiffs and counsel to the Representative Plaintiffs from all claims arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement or resolution of the Actions or the Released Claims.

5. Administration and Calculation of Claims, Final Awards and Supervision and Distribution of Settlement Fund

5.1 Plaintiffs' Settlement Counsel, or their authorized agents, acting on behalf of the Settlement Class, and subject to such supervision and direction of the Court as may be necessary or as circumstances may require, shall administer and calculate the claims submitted by Settlement Class Members and shall oversee distribution of the Net Settlement Fund (defined below) to Authorized Claimants. Neither Defendants nor KPMG shall have any liability for nor any responsibility for any matters related to the administration and calculation of claims, final awards and/or supervision and distribution of the Settlement Fund.

5.2 The Settlement Fund shall be applied as follows:

- (a) to pay counsel to the Representative Plaintiffs attorneys' fees and expenses with interest thereon (the "Fee and Expense Award"), as awarded by the Court;
- (b) to pay all the expenses reasonably and actually incurred in connection with providing notice, locating Class Members, soliciting Class claims, assisting with the filing of claims, administering and distributing the Net Settlement Fund to Authorized Claimants, processing Proof of Claim and Release forms and paying escrow fees and costs, if any;
- (c) to pay the Taxes and Tax Expenses described in ¶2.12 hereof; and

(d) to distribute the balance of the Settlement Fund (the "Net Settlement Fund") to Authorized Claimants as allowed by this Stipulation and Agreement, the Plan of Allocation, and/or the Court.

5.3 Upon the Effective Date and thereafter, and in accordance with the terms of this Stipulation and Agreement, the Plan of Allocation, or such further approval and further order(s) of the Court as may be necessary or as circumstances may require, the Net Settlement Fund shall be distributed to Authorized Claimants, subject to and in accordance with the following.

5.4 Within ninety (90) days after the mailing of the Notice or such other time as may be set by the Court, each Person claiming to be an Authorized Claimant shall be required to submit to the Claims Administrator a completed Proof of Claim and Release, substantially in the form of Exhibit A-2 attached hereto, signed under penalty of perjury and supported by such documents as are specified in the Proof of Claim and Release and as are reasonably available to the Authorized Claimant.

5.5 Except as otherwise ordered by the Court, all Settlement Class Members who fail to timely submit a Proof of Claim and Release within such period, or such other period as may be ordered by the Court, shall be forever barred from receiving any payments pursuant to this Stipulation and Agreement and the settlement set forth herein, but will in all other respects be subject to and bound by the provisions of this Stipulation and Agreement, the releases contained herein, and the Judgment.

5.6 The Net Settlement Fund shall be distributed to the Authorized Claimants substantially in accordance with a Plan of Allocation described in the Notice and approved by the Court. The proposed Plan of Allocation will not be part of this Stipulation and Agreement. However, if there is any balance remaining in the Net Settlement Fund after six (6) months from the date of distribution of the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise), Plaintiffs' Settlement Counsel shall reallocate such balance among Authorized Claimants in a manner consistent with the Plan of Allocation. Thereafter, any balance which still remains in the Net Settlement Fund shall be donated to an appropriate non-profit organization.

5.7 Neither the Defendants, KPMG nor the Related Parties shall have any responsibility for, interest in (except as provided in ¶¶2.13, 6.2, 7.5, 7.6 and 7.7 hereof), or liability whatsoever with respect to the investment or distribution of the Settlement Fund, the Plan of Allocation, the determination, administration, or calculation of claims, the payment or withholding of Taxes, or any losses incurred in connection therewith. No person shall have any claim of any kind against any of the Defendants, KPMG and/or the Related Parties with respect to the matters set forth in this §IV.5, and the Representative Plaintiffs, and each of the Settlement Class Members and Representative Plaintiffs' Counsel hereby fully, finally, and forever release, relinquish, and discharge the Defendants, KPMG and the Related Parties from any and all liability arising from or with respect to the management and disposition (including investment and distribution) of the Settlement Fund.

5.8 No Person shall have any claim against Plaintiffs' Settlement Counsel or any claims administrator, or other agent designated by Plaintiffs' Settlement Counsel, or Defendants, KPMG or their counsel based on the distributions made substantially in accordance with this Stipulation and Agreement and the settlement contained therein, the Plan of Allocation, and further orders of the Court.

5.9 It is understood and agreed by the Settling Parties that any proposed Plan of Allocation of the Net Settlement Fund including, but not limited to, any adjustments to an Authorized Claimant's claim set forth therein, is not a part of this Stipulation and Agreement and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the settlement set forth in this Stipulation and Agreement, and any order or proceedings relating to the Plan of Allocation shall not operate to terminate or cancel this Stipulation and Agreement or affect the finality of the Court's Judgment approving this Stipulation and Agreement and the settlement set forth therein, or any other orders entered pursuant to this Stipulation and Agreement.

6. Representative Plaintiffs' Counsel's Attorneys' Fees and Reimbursement of Expenses

6.1 Representative Plaintiffs or their counsel may submit an application or applications (the "Fee and Expense Application") for distributions to them from the Settlement Fund for: (a) an

award of attorneys' fees; plus (b) reimbursement of expenses, including the fees of any experts or consultants, incurred in connection with prosecuting the Actions, and incurred by Lead Plaintiffs for serving as the Lead Plaintiffs, plus any interest on such attorneys' fees and expenses at the same rate and for the same periods as earned by the Settlement Fund (until paid) as may be awarded by the Court. Representative Plaintiffs' Counsel reserve the right to make additional applications for fees and expenses incurred. Defendants and KPMG expressly take no position regarding any application for fees and expenses submitted by Representative Plaintiffs or their counsel.

6.2 The attorneys' fees and expenses, as awarded by the Court, shall be paid to Plaintiffs' Settlement Counsel from the Settlement Fund, as ordered, immediately after the Court executes an order awarding such fees and expenses. Plaintiffs' Settlement Counsel shall thereafter allocate the attorneys' fees amongst Representative Plaintiffs' Counsel in a manner in which they in good faith believe reflects the contributions of such counsel to the prosecution and settlement of the Actions. In the event that the Effective Date does not occur, or the Judgment or the order making the Fee and Expense Award is reversed or modified, or this Stipulation and Agreement is canceled or terminated for any other reason, and in the event that the Fee and Expense Award has been paid to any extent, then Representative Plaintiffs' Counsel shall within five (5) business days from receiving notice from any of the Defendants' counsel, KPMG's counsel or from a court of appropriate jurisdiction, refund to the Settlement Fund the fees and expenses previously paid to them from the Settlement Fund plus interest thereon at the same rate as earned on the Settlement Fund in an amount consistent with such reversal or modification. Each such Representative Plaintiffs' Counsel's law firm, as a condition of receiving such fees and expenses, on behalf of itself and each partner and/or shareholder of it, agrees (a) that each such law firm and its partners and/or shareholders shall be subject to the jurisdiction of the Court for the purpose of enforcing the provisions of this ¶6.2, and (b) that the Court may, upon application of Defendants or KPMG, summarily issue orders and take whatever other actions it deems appropriate, including, without limitation, issuing judgments and attachment orders and making appropriate findings of and/or sanctions for contempt, against such law firms should any such law firm fail timely to repay fees and expenses pursuant to this ¶6.2.

6.3 The procedure for and the allowance or disallowance by the Court of any applications by any of the counsel to the Representative Plaintiffs for attorneys' fees and expenses, including the fees of experts and consultants, to be paid out of the Settlement Fund, are not part of the settlement set forth in this Stipulation and Agreement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the settlement set forth in this Stipulation and Agreement, and any order or proceedings relating to the Fee and Expense Application, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Stipulation and Agreement, or affect or delay the finality of the Judgment approving this Stipulation and Agreement and the settlement of the Actions set forth therein.

6.4 Neither Defendants, KPMG nor the Related Parties shall have any responsibility for, or any liability whatsoever with respect to, any payment to Plaintiffs' Settlement Counsel from the Settlement Fund.

6.5 Defendants, KPMG and the Related Parties shall have no responsibility for, and no liability whatsoever with respect to, the allocation among Representative Plaintiffs' Counsel, and/or any other Person who may assert some claim thereto, of any Fee and Expense Award that the Court may make in the Actions, and Defendants, KPMG and the Related Parties take no position with respect to such matters.

7. Conditions of Settlement, Effect of Disapproval, Cancellation or Termination

7.1 The Effective Date of this Stipulation and Agreement shall be conditioned on the following:

(a) The Settlement Fund shall have been transferred to the Escrow Agents as required by ¶2.1 hereof, and Plaintiffs' Settlement Counsel shall not have terminated the settlement pursuant to ¶2.1;

(b) The Court shall have entered the Notice Order, as required by ¶3.1 hereof;

(c) The settlement shall not have been terminated in accordance with the procedures referenced in ¶7.4 below relating to Requests for Exclusion (as defined in ¶7.4);

(d) The Court shall have entered the Judgment, or a judgment substantially in the form of Exhibit B attached hereto; and

(e) The Judgment shall have become Final, as defined in ¶1.12 hereof.

7.2 Upon the occurrence of all of the events referenced in ¶7.1 hereof, any and all remaining interest or right of the Defendants and KPMG in or to the Settlement Fund, if any, shall be absolutely and forever extinguished.

7.3 If all of the conditions specified in ¶7.1 hereof are not met, then this Stipulation and Agreement shall be canceled and terminated subject to ¶7.6 hereof unless Plaintiffs' Settlement Counsel, counsel for the Defendants and counsel for KPMG mutually agree in writing to proceed with this Stipulation and Agreement.

7.4 If prior to the Settlement Hearing, Persons who otherwise would be members of the Settlement Class have submitted timely requests for exclusion ("Requests for Exclusion") from the Settlement Class in accordance with the provisions of the Notice Order and the notice given pursuant thereto, and if the aggregate number of shares of Hastings common stock purchased by Class Members during the Class Period, equals or exceeds the sum specified in a separate supplemental agreement ("Supplemental Agreement") between Representative Plaintiffs and Defendants, then the Defendants shall have, in their sole and absolute discretion, the option to terminate this Stipulation and Agreement in accordance with the procedures set forth in the Supplemental Agreement. The Supplemental Agreement and all of its terms are hereby incorporated into this Stipulation and Agreement (and vice versa); however, the Supplemental Agreement will not be filed with the Court unless and until a dispute among the parties concerning its interpretation or application arises.

7.5 Unless otherwise ordered by the Court, in the event this Stipulation and Agreement shall be terminated or canceled or fails to become effective for any reason, within five (5) business days after written notification of such event is sent by counsel for any of the Defendants or for KPMG or by Plaintiffs' Settlement Counsel to the Escrow Agent, the Settlement Fund (including earnings thereon), plus any amount then remaining in the Class Notice and Administration Fund (including earnings thereon), less expenses described in ¶2.11 hereof and allocated in a *pro rata* manner to the DSP and KSP, shall be refunded by the Escrow Agent to the Hastings Defendants (in

the form of the DSP) and/or to, KPMG (in the form of the KSP) and/or their designees pursuant to written instructions from counsel for the Hastings Defendants or for KPMG. At the request of counsel for the Hastings Defendants or for KPMG, the Escrow Agent or its designee shall apply for any tax refund owed to the Settlement Fund and pay the proceeds, after deduction of any fees or expenses reasonably incurred in connection with such application(s) for refund, pursuant to written instructions from counsel for the Hastings Defendants and/or KPMG.

7.6 In the event that this Stipulation and Agreement is not finally approved by the Court or the settlement set forth in this Stipulation and Agreement is terminated, canceled, or otherwise fails to become effective in accordance with its terms, then the Representative Plaintiffs, Settlement Class and Defendants shall be restored to their respective positions with regard to the Actions as of September 12, 2002. In such event, the terms and provisions of this Stipulation and Agreement, with the exception of ¶¶1.1-1.30, 2.13, 5.7, 6.2, 6.4-6.5, 7.3-7.7, and 8.3-8.15 hereof, shall have no further force and effect with respect to the Settling Parties or their Related Parties and shall not be used in the Actions or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of this Stipulation and Agreement shall be treated as vacated, *nunc pro tunc*. No order of the Court or modification or reversal on appeal of any order of the Court concerning the Plan of Allocation or the amount of any attorneys' fees, expenses and interest awarded by the Court to the Representative Plaintiffs or any of their counsel shall constitute grounds for cancellation or termination of this Stipulation and Agreement.

7.7 If the Effective Date does not occur, or if this Stipulation and Agreement is terminated, canceled, or otherwise fails to become effective pursuant to its terms, neither the Representative Plaintiffs nor any of their counsel shall have any obligation to repay any amounts actually and properly disbursed in accordance with ¶2.11 from the Class Notice and Administration Fund. In addition, any expenses already incurred and properly chargeable to the Class Notice and Administration Fund pursuant to ¶2.11 hereof at the time of such termination or cancellation but which have not been paid, shall be paid by the Escrow Agent in accordance with the terms of this Stipulation and Agreement prior to the balance of the Class Notice and Administration Fund being refunded in accordance with ¶7.5 hereof.

7.8 If a case is commenced in respect to any Hastings Defendant under Title 11 of the United States Code (Bankruptcy), or a trustee, receiver or conservator is appointed under any similar law, and in the event of the entry of a final order of a court of competent jurisdiction determining the transfer of the Settlement Fund, or any portion thereof, by or on behalf of such Hastings Defendant to be a preference, voidable transfer, fraudulent transfer or similar transaction, then, as to such Hastings Defendant the releases given and Judgment entered in favor of such Hastings Defendant pursuant to this Stipulation and Agreement shall be null and void.

8. Miscellaneous Provisions

8.1 The Settling Parties (a) acknowledge that it is their intent to consummate this agreement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Stipulation and Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of this Stipulation and Agreement.

8.2 The Settling Parties agree to request the Court to consolidate the Actions solely for settlement purposes.

8.3 Hastings warrants and represents that it is not "insolvent" within the meaning of 11 U.S.C. §101(32), as of the time this Stipulation and Agreement is executed and as of the time any payments are transferred or made as required by this Stipulation and Agreement.

8.4 The settlement compromises claims which are contested and shall not be deemed an admission by any Settling Party as to the merits of any claim or defense. Defendants and KPMG retain their right to deny that the claims which were advanced, sought to be advanced or could have been advanced in the Actions or in other litigation were meritorious. Defendants and KPMG will not make any public statement regarding whether or not the Actions were filed in good faith. The Proposed Final Judgment attached hereto as Exhibit B shall contain a finding that during the course of the Actions, the parties and their respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure 11. The Settling Parties agree that the amount paid to the Settlement Fund and the other terms of the settlement were negotiated in good faith by the Settling Parties, and reflect a settlement that was reached voluntarily after consultation with competent legal counsel. The Settling Parties reserve their right to rebut, in a manner that such party determines to

be appropriate, any contention made in any public forum that the Actions were brought, defended and/or settled in bad faith or without a reasonable basis. Notwithstanding any other provision of this Stipulation and Agreement, nothing in this Stipulation and Agreement shall be construed as or deemed to be a release or waiver of any rights or claims between or among any of the Defendants and/or KPMG (other than the Auditor Claims, which are being assigned by Hastings to the Settlement Class and released by the Settlement Class as Released Claims pursuant to the terms hereof), including specifically, but not limited to, the rights and/or claims of the Underwriter Defendants to indemnification and/or contribution pursuant to the Underwriting Agreement dated June 11, 1998.

8.5 The Settling Parties agree that neither this Stipulation and Agreement nor the settlement contained herein, nor any act performed or document prepared pursuant to or in furtherance of this Stipulation and Agreement or the settlement contained herein: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Defendants or KPMG; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Defendants or KPMG in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Defendants and/or KPMG may file this Stipulation and Agreement and/or any document prepared pursuant to or in furtherance of this Stipulation and Agreement or the settlement (including the Judgment) in any action for any other purpose.

8.6 All agreements made and orders entered during the course of the Actions relating to the confidentiality of information shall survive this Stipulation and Agreement and shall be enforceable pursuant to their terms.

8.7 All of the Exhibits to this Stipulation and Agreement are material and integral parts hereof and are fully incorporated herein by this reference.

8.8 This Stipulation and Agreement may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

8.9 This Stipulation and Agreement, the Exhibits attached hereto and the Supplemental Agreement constitute the entire agreement among the parties hereto and no representations,

warranties or inducements have been made to any party concerning this Stipulation and Agreement or its Exhibits other than the representations, warranties and covenants contained and memorialized in such documents. Except as otherwise provided herein, each party shall bear its own costs.

8.10 Plaintiffs' Settlement Counsel, on behalf of the Class, are expressly authorized by the Representative Plaintiffs to take all appropriate action required or permitted to be taken by the Class pursuant to this Stipulation and Agreement to effectuate its terms and also are expressly authorized to enter into any modifications or amendments to this Stipulation and Agreement on behalf of the Class which they deem appropriate.

8.11 Each counsel or other Person executing this Stipulation and Agreement or any of its Exhibits on behalf of any party hereto hereby warrants that such Person has the full authority to do so.

8.12 This Stipulation and Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of original executed counterparts shall be filed with the Court.

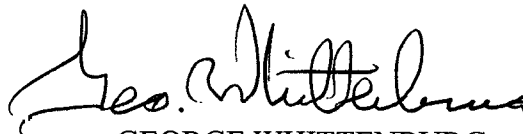
8.13 This Stipulation and Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto.

8.14 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Stipulation and Agreement, and all parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Stipulation and Agreement.

8.15 This Stipulation and Agreement and the Exhibits hereto shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of Texas, and the rights and obligations of the parties to this Stipulation and Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of Texas without giving effect to that State's choice-of-law principles.

IN WITNESS WHEREOF, the parties hereto have caused this Stipulation and Agreement to be executed, by their duly authorized attorneys, dated as of January 9, 2003.

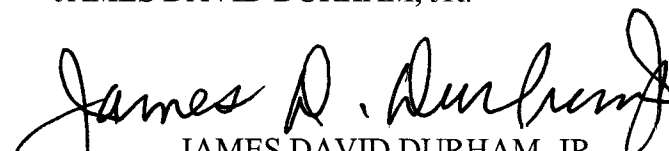
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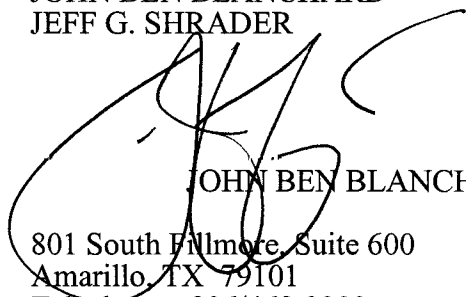
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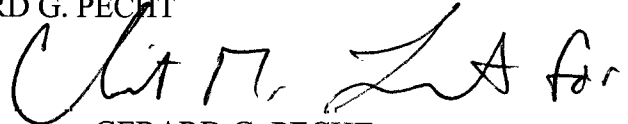
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