

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED

MAR 10 2003

CLERK, U.S. DISTRICT COURT
By

Deputy

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

§ DATE: March 10, 2003

§ TIME: 10:00 a.m.

§ COURTROOM: The Honorable
§ Mary Lou Robinson

FINAL JUDGMENT AND ORDER
OF DISMISSAL WITH PREJUDICE

This matter came before the Court for hearing pursuant to the Order of this Court, dated January 13, 2003, on the application of the parties for approval of the settlement set forth in the Amended Stipulation of Settlement and Settlement Agreement dated as of January 8, 2003 (the "Stipulation and Agreement"). Due and adequate notice having been given of the settlement as required in said Order, and the Court having considered all papers filed and proceedings had herein and otherwise being fully informed in the premises and good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. This Judgment incorporates by reference the definitions in the Stipulation and Agreement, and all terms used herein shall have the same meanings as set forth in the Stipulation and Agreement.

2. This Court has jurisdiction over the subject matter of the Actions and over all parties to the Actions and to the Stipulation and Agreement, including all members of the Settlement Class.

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court certifies a Class of 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 requested exclusion from the Settlement Class pursuant to the "Notice of Pendency and Proposed Settlement of Class Actions" sent to the Class.

4. With respect to the Class, this Court finds and concludes that: (a) the Members of the Class are so numerous that joinder of all Class Members is impracticable; (b) there are questions of law and fact common to the Class which predominate over any individual questions; (c) the claims of the Representative Plaintiffs are typical of the claims of the Class; (d) the Representative Plaintiffs and their counsel have fairly and adequately represented and protected the interests of the Class Members; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy, considering: (i) the interests of the Members of the Class in individually controlling the prosecution of the separate actions, (ii) the extent and nature of any

litigation concerning the controversy already commenced by Members of the Class, (iii) the desirability or undesirability of continuing the litigation of these claims in this particular forum, and (iv) the difficulties likely to be encountered in the management of the class action.

5. Except as to any individual claim of those Persons (identified in Exhibit 1 attached hereto) who have validly and timely requested exclusion from the Class, the Actions and all claims contained therein, as well as all of the Released Claims, are dismissed with prejudice as to the Representative Plaintiffs and the other members of the Settlement Class, and as against the Released Persons. The parties are to bear their own costs, except as otherwise provided in the Stipulation and Agreement.

6. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby approves the settlement set forth in the Stipulation and Agreement and finds that said settlement is, in all respects, fair, reasonable and adequate to, and is in the best interests of, the Representative Plaintiffs, the Settlement Class and each of the Settlement Class Members, especially in light of the benefits to the members of the Settlement Class, the complexity, expense and possible duration of further litigation, the discovery and investigation conducted, and the risk and difficulty of establishing liability, causation and damages. This Court further finds the settlement set forth in the Stipulation and Agreement is the result of arm's-length negotiations between experienced counsel representing the interests of the Representative Plaintiffs, the Settlement Class Members and the Defendants and KPMG. Accordingly, the settlement embodied in the Stipulation and Agreement is hereby approved and shall be consummated in accordance with the terms and provisions of the Stipulation and Agreement.

7. The Court further finds that the settlement set forth in the Stipulation and Agreement is fair and equitable to the Representative Plaintiffs, the Settlement Class, each of the Settlement Class Members, the Defendants and KPMG.

8. Upon the Effective Date 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 the

Released Persons, whether or not such Settlement Class Member executes and delivers a Proof of Claim and Release.

9. All Settlement Class Members are hereby forever barred and enjoined from prosecuting the Released Claims against the Released Persons.

10. Upon the Effective Date hereof, each of the Released Persons shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished and discharged each and all of the Settlement Class Members 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.

11. Consistent with 15 U.S.C. §78u-4(f)(7), and any similar provision of law of any state or territory of the United States (a) all Persons except the Defendants are hereby permanently barred, restrained, and enjoined from commencing, prosecuting, or asserting against any of the Defendants any claims (including without limitation claims for contribution, indemnity, and/or equitable indemnity) based upon, arising from, and/or in any way connected with or relating to the Released Claims; (b) all Persons except the Defendants are hereby permanently barred, restrained, and enjoined from commencing, prosecuting, or asserting any such claims against the Related Parties; and (c) Defendants are hereby permanently barred, restrained, and enjoined from commencing, prosecuting, or asserting all future contribution claims against any Person, other than a Person whose liability has been extinguished by the settlement of any such Defendant, but this ¶11(a)-(c) shall not apply to (i) any claims for contribution, indemnity, apportionment or other similar right arising from or in connection with the assertion of any claim against KPMG and/or any Defendant and/or Related Party by a Person who timely and validly requests exclusion from the Class as defined in ¶1.5 of the Stipulation and Agreement; and/or (ii) any claim of the Underwriter Defendants to indemnification and/or contribution pursuant to the Underwriting Agreement dated June 11, 1998. Any obligation or liability with respect to any such claims, except such obligations and liability among or between the Defendants or their Related Parties, is hereby fully, finally, and forever discharged, extinguished, and unenforceable. For the purpose of this ¶11, references to the Defendants and KPMG shall include any/all of the Defendants and KPMG and their assigns and subrogees.

12. The Notice given to the Class was the best notice practicable under the circumstances, including the individual notice to all Members of the Class who could be identified through reasonable effort. Said notice provided the best notice practicable under the circumstances of those proceedings and of the matters set forth therein, including the proposed settlement set forth in the Stipulation and Agreement, to all Persons entitled to such notice, and said notice fully satisfied the requirements of Federal Rule of Civil Procedure 23 and the requirements of due process.

13. Any plan of allocation submitted by Plaintiffs' Settlement Counsel or any order entered regarding the attorneys' fees application shall in no way disturb or affect this Final Judgment and shall be considered separate from this Final Judgment.

14. Except at the election of the Defendants (including any assignee(s) or subrogee(s) of the Defendants) or any of them, neither the Stipulation and Agreement nor the settlement contained therein, nor any act performed or document prepared, executed and/or entered pursuant to or in furtherance of the Stipulation and Agreement or the settlement: (i) 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 (ii) 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 in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Defendants and/or KPMG may file the Stipulation and Agreement and/or any document prepared pursuant to or in furtherance of the Stipulation and Agreement or the settlement (including this Judgment) in any action for any other purpose.

15. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over: (a) implementation of this settlement and any award or distribution of the Settlement Fund, including earnings thereon; (b) disposition of the Settlement Fund; (c) hearing and determining applications for attorneys' fees, interest and expenses in the Actions; and (d) all parties hereto for the purpose of construing, enforcing and administering the Stipulation and Agreement.

16. The Court finds that during the course of the Actions, the Settling Parties and their respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure 11.

17. In the event that the settlement does not become effective in accordance with the terms of the Stipulation and Agreement or in the event that the Settlement Fund, or any portion thereof, is returned to the Defendants or KPMG, then this Judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation and Agreement and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation and Agreement.

IT IS SO ORDERED.

DATED: *Mary Lou Robinson* 10/20/09

Mary Lou Robinson
THE HONORABLE MARY LOU ROBINSON
UNITED STATES DISTRICT JUDGE

Submitted by:

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As of February 27, 2003 no
requests for exclusion were received.

EXHIBIT 1