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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**IN RE COMDISCO SECURITIES
LITIGATION**

Master File No. 01 C 2110

Judge Milton I. Shadur

ORDER AND FINAL JUDGMENT

WHEREAS, the parties hereto have executed a Stipulation of Settlement dated May 3, 2005, which, together with the exhibits annexed thereto, sets forth the terms and conditions for a proposed settlement of this action (the "Action") and for dismissal of the Action with prejudice upon the terms and conditions set forth therein (the "Stipulation");

WHEREAS, the Court signed the Preliminary Approval Order thereon on May 5, 2005, (the "Preliminary Approval Order") (entered May 10, 2005), certifying the Settlement Class for settlement purposes, directing that the Notice of Class Action, Proposed Settlement, and Final Hearing (the "Notice") be mailed to the Class, directing that a Summary Notice of Class Action, Proposed Settlement, and Final Hearing (the "Summary Notice") be published on *Business Wire* and in the national edition of the *Wall Street Journal*, and scheduling a hearing to determine whether the proposed Settlement of the Action on the terms and conditions provided for in the Stipulation is fair, reasonable and adequate and should be approved by the Court; whether an order and judgment approving the Settlement and dismissing the Action should be entered thereon substantially in the form annexed as Exhibit E to the Stipulation (the "Judgment"); and whether to award attorneys' fees and expenses to Lead Counsel (the "Fee and Expense Award") and reasonable expenses to Lead Plaintiff (the "Lead Plaintiff's Expense Award");

WHEREAS, in accordance with the Stipulation and the Preliminary Approval Order, Lead Counsel caused the Notice and Proof of Claim and Release (the "Proof of Claim") to be mailed to the Settlement Class and caused the Summary Notice to be published on *Business Wire* and in the national edition of the *Wall Street Journal*, which notified the members of the Settlement Class of the proposed settlement of the Action and of the opportunity to object to or be excluded from the Settlement and the Class;

WHEREAS, pursuant to the Notice and Summary Notice, and upon notice to all parties, a Final Settlement Hearing was held before this Court on May 5, 2005, at which all interested persons were given an opportunity to be heard, to consider whether to approve the proposed Settlement of the Action on the terms and conditions provided for in the Stipulation as fair, reasonable, and adequate; whether to finally approve the Settlement and enter an order dismissing the Action substantially in the form annexed as Exhibit E to the Stipulation; and whether to enter the Fee Award and Expense Award, and the Lead Plaintiff's Expense Award; and

WHEREAS, the Court has read and considered all submissions in connection with the proposed Settlement, and has reviewed and considered the files and records herein;

NOW THEREFORE, GOOD CAUSE APPEARING, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. Terms defined in the Stipulation have the same meaning when used herein.
2. The form, content, distribution, and publication of the Notice and Summary Notice provided to Settlement Class members constitute the best notice practicable under the circumstances and include mailing of the Notice to all members of the Class who

could be identified by reasonable effort. The affidavits or declarations of mailing filed with this Court on July 7, 2005, demonstrate that the requirements of the Preliminary Approval Order with respect to the Notice, the Proof of Claim and Summary Notice have been complied with, and further that the best notice practicable under the circumstances was in fact given and constituted valid, due, and sufficient notice to members of the Class, complying fully with due process, Federal Rule of Civil Procedure 23, and Section 21D(a)(7) of the Securities Exchange Act of 1934, as amended by the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4(a)(7).

3. The Court finds all of the requirements for certification of a class for settlement purposes under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure to be satisfied. Specifically, the Court finds and concludes that, for purposes of this Settlement only:

(a) millions of shares of Comdisco common stock were purchased by thousands of geographically-dispersed Persons during the Settlement Class Period, and thus the members of the Settlement Class are so numerous that joinder of all Settlement Class members in the Action is impracticable;

(b) Lead Plaintiff alleges a fraud on the market, and thus questions of law and fact common to the Settlement Class predominate over any individual questions;

(c) Lead Plaintiff purchased shares of Comdisco common stock during the Settlement Class Period and thus his claims are typical of the claims of the Settlement Class, and are not subject to any unique defenses;

(d) Lead Plaintiff participated in this Action, and Lead Counsel have fairly and adequately represented and protected the interests of the Settlement Class members; and

(e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy, considering: (1) the interests of the members of the

Settlement Class in individually controlling the prosecution of separate actions, (2) the extent and nature of any litigation concerning the controversy already commenced by members of the Settlement Class, (3) the desirability or undesirability of continuing the litigation of these claims in this particular forum, and (4) the difficulties likely to be encountered in the management of the Action.

4. Accordingly, for purposes of this Settlement, the Court confirms its prior preliminary findings and determination that the Action is certified as a class action pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) on behalf of the Settlement Class defined in the Preliminary Approval Order and that the Lead Plaintiff is certified as representative of the Settlement Class.

5. The members of the Settlement Class who have filed timely and valid requests for exclusion in accordance with the Preliminary Approval Order and the Notice, and whose names appear on Exhibit 1 hereto, are no longer members of the Class and, accordingly, are not bound by this Judgment.

6. The Stipulation and the Settlement are fair, reasonable and adequate, are in the best interests of the Settlement Class, and are the product of substantial, good faith, arm's-length negotiations between and among the Settling Parties. The Stipulation and the Settlement are hereby finally approved in all respects, and the parties to the Stipulation are hereby directed to consummate and perform its terms.

7. The Action is dismissed in its entirety with prejudice and without costs to any party as against any other party.

8. On the Effective Date, as defined in the Stipulation, each member of the Settlement Class, including Plaintiff (i) shall be conclusively deemed to have fully, finally and forever released, relinquished, and discharged all Settled Claims against the Released Parties,

(ii) shall be conclusively deemed to have and by operation of this Judgment shall have fully, finally, and forever released, relinquished, and discharged the Released Parties from all claims arising out of or in connection with the institution, prosecution, or assertion of the Action or the Settled Claims, (iii) shall be conclusively deemed to have covenanted not to sue the Released Parties in any action alleging any Settled Claims, and (iv) shall forever be enjoined and barred from asserting any of the Settled Claims against any of the Released Parties in any action or proceeding of any nature, whether or not such members of the Settlement Class have executed and delivered a Proof of Claim, whether or not such members of the Settlement Class have participated in the Settlement Fund, whether or not such members of the Settlement Class have filed an objection to the Settlement, the proposed plan of allocation, any application by Lead Counsel for an award of attorneys' fees and expenses, or any application by Lead Plaintiff for any award of expenses, and whether or not the claims of such members of the Settlement Class have been approved or allowed.

9. With respect to any and all Settled Claims, upon the Effective Date, the members of the Settlement Class shall be conclusively deemed to, and by operation of this Judgment shall, waive and relinquish, to the fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code, 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.

10. Also with respect to any and all Settled Claims, the members of the Settlement Class shall be conclusively deemed to, and upon the Effective Date and by operation of the Judgment shall, waive any and all provisions, rights and benefits conferred by the law of any state or territory of the United States, or principle of common law, which is

similar, comparable or equivalent to Section 1542 of the California Civil Code. The members of the Settlement Class may hereafter discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Settled Claims but, upon the Effective Date, fully, finally and forever settle and release any and all Settled Claims, known or unknown, suspected or unsuspected, contingent or noncontingent, whether or not concealed or hidden, which now exist, or heretofore have existed, or shall come into existence in the future, upon any theory of law or equity, 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. The Court finds that the foregoing waiver, and that of paragraph 9 above, were bargained for and constitute key elements of this Stipulation.

11. In accordance with 15 U.S.C. § 78u-4(f)(7)(A), any and all claims for contribution arising out of any Settled Claims, including, but not limited to, any claims that are based upon, arise out of or relate to the Action and/or any matters that were alleged or could have been alleged in the Complaint (i) by any Person against any Defendant, and (ii) by any Defendant against any Person, other than as set out in 15 U.S.C. § 78u-4(f)(7)(A)(ii), are hereby permanently barred, extinguished, discharged, satisfied, and unenforceable. In accordance with 15 U.S.C. § 78u-4(f)(7)(B), any final verdict or judgment that may be obtained by or on behalf of the Settlement Class or a member of the Settlement Class against any Person other than any Defendant shall be reduced by the greater of (x) an amount that corresponds to the percentage of responsibility of the Defendants for the loss to the Settlement Class or a Settlement Class Member, or (y) the amount paid by or on behalf of the Defendants to the Settlement Class in connection with the Settlement. Each member of the Class who did not timely and validly

request exclusion in accordance with the Preliminary Approval Order and the Notice, and who is not identified in Exhibit 1 hereto, is bound by this Judgment and by the Settlement, including the releases provided for in this Judgment, and is barred and permanently enjoined from commencing and prosecuting, either directly, representatively, or in any other capacity, against Defendants or the Released Parties, any or all of the Settled Claims and all claims relating to the Settlement.

12. The Stipulation and the Settlement are not an admission by Defendants, or by the Plaintiff or the Settlement Class, nor is this Judgment a finding with respect to the validity of any claims or defenses in the Action or of any wrongdoing, or lack thereof, by Defendants. Furthermore, neither the Stipulation nor the Settlement is a concession by any Defendant, or by the Plaintiff or any member of the Settlement Class, and neither shall be used as an admission of any fault or omission, or lack thereof, by any Person. Neither this Judgment, the Stipulation nor any act proposed or performed, nor any negotiation, nor any document executed or proceedings held pursuant to or in furtherance of the Stipulation or the Settlement is, may be deemed to be, or may be used as, an admission of, or evidence of, any wrongdoing, negligence, misrepresentation, fault, omission, breach of duty, violation or liability of any of the Defendants or the Plaintiff or the Settlement Class, or of any fact alleged by the Plaintiff, including in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal, including in the Action. Entering into or carrying out the Settlement or the Stipulation, and the exhibits thereto, and any negotiations or proceedings related thereto shall not in any event be construed as, or deemed to be evidence of, an admission or concession with regard to the denials or defenses of any of the Defendants, or the claims of the Plaintiff or the Settlement Class, and shall not be offered or received in evidence in any action or proceeding against any party hereto in any court,

administrative agency or other tribunal for any purpose whatsoever, other than to enforce the provisions of this Judgment, the Stipulation, or any related agreement or release; except that the Stipulation and Settlement may be used in such proceedings as may be necessary to consummate or enforce this Stipulation, the Settlement, or the Judgment, and Defendants may file this Stipulation and/or the Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

13. The Court reserves jurisdiction, without affecting the finality of this Judgment, over:

13.1 implementation of this Settlement and any award or distribution of the Gross Settlement Fund and the Net Settlement Fund, including interest earned or accrued thereon;

13.2 disposition of the Gross Settlement Fund and Net Settlement Fund, including the Plan of Allocation;

13.3 enforcement and administration of the Stipulation and the Settlement, including enforcing any releases in connection therewith;

13.4 all other matters related or ancillary to the foregoing.

14. Any determination by the Claims Administrator as to the sufficiency, adequacy or timeliness of the claim of any Settlement Class member, or the amount of that claim, either in dollar amount or as a percentage of the Settlement Fund, shall be conclusive unless the Class member timely files an application with the Court disputing the determination.

15. In the event that this Judgment does not become Final or the Settlement does not become effective or is canceled or terminated in accordance with the terms and provisions of the Stipulation, or the Letter Agreement, then this Judgment shall be rendered null and void and be vacated, and all orders entered in connection therewith by this Court shall be rendered null and void and the Settling Parties shall be deemed to have reverted to their respective status prior to the execution of the Stipulation, and they shall proceed in all respects as if the Stipulation had not been executed and the related orders had not been entered, preserving in that event all of their respective claims and defenses in the Action.

16. The costs and expenses associated with the consummation and/or administration of the Settlement shall be paid pursuant to the terms of the Stipulation.

17. The Court awards to Lead Counsel the sum of \$2,475,000 in attorneys' fees and the sum of \$226,049.64 as reimbursement of expenses, plus interest on such amounts in proportion to the interest earned on the Settlement Fund. Such amounts are reasonable and appropriate under the circumstances of this case. The fees and expenses shall be paid to Lead Counsel out of the Gross Settlement Fund, within five (5) business days following the entry of this Order, subject to an express undertaking by Lead Counsel to repay any such fees and expenses to the extent that the amounts awarded shall be modified, reduced, or reversed in the event of an appeal from this Order and Final Judgment. Lead Counsel shall allocate such Fee and Expense Award among all plaintiffs' counsel based upon their respective contributions to the prosecution of the Action.


18. The Court awards the Lead Plaintiff the sum of \$3,000 as reimbursement of expenses, to be paid as soon as practicable following the Effective Date.

19. Any Person who is not a member of the Settlement Class or counsel to the Class shall have no right to any portion of, or in the distribution of, the Settlement Fund unless otherwise ordered by the Court or otherwise provided in the Stipulation.

20. The Court finds that, during the course of the Action, counsel for the Settling Parties have each conducted themselves in accordance with Rule 11 of the Federal Rules of Civil Procedure.

21. It is expressly determined within the meaning of Rule 54(b) of the Federal Rules of Civil Procedure that there is no just reason for delay of entry of this Order and Final Judgment and the Clerk of the Court is directed to enter this Judgment forthwith.

Dated: *July 14, 2005*



Milton I. Shadur
Senior United States District Judge

EXHIBIT 1

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- (1) John A. Blair;
- (2) Steven R. Davis;
- (3) Audrey Fitzpatrick;
- (4) William E. Frawley;
- (5) Thomas A. Gazdziak;
- (6) Rosemary Geisler;
- (7) Allan Graham;
- (8) Hydrate Chemical Company Dana Inv.;
- (9) Edward Pacewicz;
- (10) Michael J. Poisella; and
- (11) Robert A. Sibik