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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION

12 SECURITIES AND EXCHANGE
13 COMMISSION,

14 Plaintiff,

15 vs.

16 MERCURY INTERACTIVE, LLC (F/K/A
17 MERCURY INTERACTIVE, INC.),
18 AMNON LANDAN, SHARLENE
19 ABRAMS, DOUGLAS SMITH and
20 SUSAN SKAER,

21 Defendants.

Case No. C-07-2822 JF

**[PROPOSED] FINAL JUDGMENT AS TO
DEFENDANT SHARLENE ABRAMS**

22 The Securities and Exchange Commission having filed a Complaint and Defendant
23 Sharlene Abrams having entered a general appearance; consented to the Court's jurisdiction over
24 Defendant and the subject matter of this action; consented to entry of this Final Judgment without
25 admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings
26 of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

27 I.

28 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and
Defendant's agents, servants, employees, attorneys, and all persons in active concert or

1 participation with them who receive actual notice of this Final Judgment by personal service or
2 otherwise are permanently restrained and enjoined from violating, directly or indirectly,
3 Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. § 78j(b)]
4 and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or
5 instrumentality of interstate commerce, or of the mails, or of any facility of any national securities
6 exchange, in connection with the purchase or sale of any security:

- 7 (a) to employ any device, scheme, or artifice to defraud;
- 8 (b) to make any untrue statement of a material fact or to omit to state a material fact
9 necessary in order to make the statements made, in the light of the circumstances
10 under which they were made, not misleading; or
- 11 (c) to engage in any act, practice, or course of business which operates or would
12 operate as a fraud or deceit upon any person.

13 II.

14 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
15 and Defendant’s agents, servants, employees, attorneys, and all persons in active concert or
16 participation with them who receive actual notice of this Final Judgment by personal service or
17 otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities
18 Act of 1933 (the “Securities Act”) [15 U.S.C. § 77q(a)] in the offer or sale of any security by the
19 use of any means or instruments of transportation or communication in interstate commerce or by
20 use of the mails, directly or indirectly:

- 21 (a) to employ any device, scheme, or artifice to defraud;
- 22 (b) to obtain money or property by means of any untrue statement of a material fact or
23 any omission of a material fact necessary in order to make the statements made, in
24 light of the circumstances under which they were made, not misleading; or
- 25 (c) to engage in any transaction, practice, or course of business which operates or
26 would operate as a fraud or deceit upon the purchaser.

III.

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2 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
3 and Defendant's agents, servants, employees, attorneys, and all persons in active concert or
4 participation with them who receive actual notice of this Final Judgment by personal service or
5 otherwise are permanently restrained and enjoined from violating Section 14(a) of the Exchange
6 Act [15 U.S.C. § 78n(a)] and Rule 14a-9 [17 C.F.R. § 240.14a-9], promulgated thereunder,
7 directly or indirectly, by making solicitations by means of a proxy statement, form of proxy,
8 notice of meeting or other communication, written or oral, containing any statement which, at the
9 time and in the light of the circumstances under which it is made, is false or misleading with
10 respect to any material fact, or which omits to state any material fact necessary in order to make
11 the statements therein not false or misleading or necessary to correct any statement in any earlier
12 communication with respect to the solicitation of a proxy for the same meeting or subject matter
13 which has become false or misleading.

IV.

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15 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
16 and Defendant's agents, servants, employees, attorneys, and all persons in active concert or
17 participation with them who receive actual notice of this Final Judgment by personal service or
18 otherwise are permanently restrained and enjoined from violating Section 13(b)(5) of the
19 Exchange Act [15 U.S.C. § 78m(b)(5)] and Rule 13b2-1 [17 C.F.R. § 240.13b2-1], directly or
20 indirectly, by knowingly circumventing or knowingly failing to implement a system of internal
21 accounting controls or knowingly falsifying or causing to be falsified any book, record, or
22 account subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

V.

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24 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
25 and Defendant's agents, servants, employees, attorneys, and all persons in active concert or
26 participation with them who receive actual notice of this Final Judgment by personal service or
27 otherwise are permanently restrained and enjoined from violating Rule 13b2-2 [17 C.F.R.
28 § 240.13b2-2], by, directly or indirectly,

- 1 (a) making or causing to be made a materially false or misleading statement, or
2 omitting to state or causing another person to omit to state, any material fact
3 necessary in order to make statements made, in light of the circumstances under
4 which such statements were made, not misleading, to an accountant in connection
5 with: (i) any audit, review or examination of the financial statements of an issuer,
6 or (ii) the preparation or filing of any document or report required to be filed with
7 the Commission;
- 8 (b) taking action, or directing another to take action, to coerce, manipulate, mislead, or
9 fraudulently influence any independent public or certified public accountant
10 engaged in the performance of an audit or review of an issuer's financial
11 statements required to be filed with the Commission, while knowing or while it
12 should have been known that such action, if successful, could result in rendering
13 the issuer's financial statements materially misleading.

14 VI.

15 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
16 and Defendant's agents, servants, employees, attorneys, and all persons in active concert or
17 participation with them who receive actual notice of this Final Judgment by personal service or
18 otherwise are permanently restrained and enjoined from violating Section 16(a) of the Exchange
19 Act [15 U.S.C. § 78p(a)] and Rule 16a-3 [17 C.F.R. § 240.16a-3], promulgated thereunder,
20 directly or indirectly, by failing to file, by improperly filing, or by filing inaccurate information in
21 statements with the Commission regarding ownership of an issuer's securities, registered pursuant
22 to Section 12 of the Exchange Act [15 U.S.C. § 78I], as well as any changes in the ownership of
23 such securities.

24 VII.

25 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
26 and Defendant's agents, servants, employees, attorneys, and all persons in active concert or
27 participation with them who receive actual notice of this Final Judgment by personal service or
28 otherwise are permanently restrained and enjoined from aiding and abetting any violation of

1 Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a),
2 78m(b)(2)(A), and 78m(b)(2)(B)] and Rules 12b-20, 13a-1, and 13a-13 [17 C.F.R. §§ 240.12b-
3 20, 240.13a-1, 240.13a-13], promulgated thereunder, directly or indirectly, by knowingly
4 providing substantial assistance to an issuer having securities registered pursuant to Section 12 of
5 the Exchange Act [15 U.S.C. § 78l], or any issuer which is required to file reports pursuant to
6 Section 15(d) of the Exchange Act [15 U.S.C. §78o(d)], by:

- 7 (a) filing or causing to be filed with the Commission any report required to be filed
8 with the Commission pursuant to Section 13(a) of the Exchange Act [15 U.S.C.
9 § 78m(a)] and the rules and regulations promulgated thereunder, which contains
10 any untrue statement of material fact, which omits to state any material fact
11 necessary in order to make the statements made, in light of the circumstances
12 under which they were made, not misleading, or which omits to disclose any
13 information required to be disclosed; or
- 14 (b) failing to make and keep books, records, and accounts which, in reasonable detail,
15 accurately and fairly reflect the transactions and dispositions of the assets of the
16 issuer; or
- 17 (c) failing to devise and maintain a system of internal accounting controls sufficient to
18 provide reasonable assurances that: (1) transactions are executed in accordance
19 with management's general or specific authorization; (2) transactions are recorded
20 as necessary (a) to permit preparation of financial statements in conformity with
21 generally accepted accounting principles (GAAP) or any other criteria applicable
22 to such statements and (b) to maintain accountability for assets; (3) access to assets
23 is permitted only in accordance with management's general or specific
24 authorization; and (4) the recorded accountability for assets is compared with the
25 existing assets at reasonable intervals and appropriate action is taken with respect
26 to any differences.

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)] and Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)], Defendant is prohibited from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

IX.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$2,287,914, representing profits gained as a result of the conduct alleged in the Complaint (of which \$1,498,822 represents the “in-the-money” benefit from exercises of backdated option grants), together with prejudgment interest in the amount of \$112,086, and a civil penalty in the amount of \$425,000 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. Defendant’s payment on December 19, 2007, of \$1,498,822 to Mercury Interactive, LLC, shall constitute partial satisfaction of the disgorgement obligation. Defendant shall satisfy the balance of this obligation by paying \$1,326,178 within ten business days to the Clerk of this Court, together with a cover letter identifying Abrams as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. Defendant shall simultaneously transmit photocopies of such payment and letter to the Commission’s counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Defendant. Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

The Clerk shall deposit the funds into an interest bearing account with the Court Registry Investment System (“CRIS”) or any other type of interest bearing account that is utilized by the Court. These funds, together with any interest and income earned thereon (collectively, the “Fund”), shall be held in the interest bearing account until further order of the Court. In

1 accordance with 28 U.S.C. § 1914 and the guidelines set by the Director of the Administrative
2 Office of the United States Courts, the Clerk is directed, without further order of this Court, to
3 deduct from the income earned on the money in the Fund a fee equal to ten percent of the income
4 earned on the Fund. Such fee shall not exceed that authorized by the Judicial Conference of the
5 United States.

6 The Commission may by motion propose a plan to distribute the Fund subject to the
7 Court's approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair
8 Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any
9 such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this
10 Judgment shall be treated as penalties paid to the government for all purposes, including all tax
11 purposes. To preserve the deterrent effect of the civil penalty, Defendant shall not, after offset or
12 reduction of any award of compensatory damages in any Related Investor Action based on
13 Defendant's payment of disgorgement in this action, argue that she is entitled to, nor shall she
14 further benefit by, offset or reduction of such compensatory damages award by the amount of any
15 part of Defendant's payment of a civil penalty in this action ("Penalty Offset"). If the court in
16 any Related Investor Action grants such a Penalty Offset, Defendant shall, within 30 days after
17 entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action
18 and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the
19 Commission directs. Such a payment shall not be deemed an additional civil penalty and shall
20 not be deemed to change the amount of the civil penalty imposed in this Judgment. For purposes
21 of this paragraph, a "Related Investor Action" means a private damages action brought against
22 Defendant by or on behalf of one or more investors based on substantially the same facts as
23 alleged in the Complaint in this action.

24 X.

25 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is
26 incorporated herein with the same force and effect as if fully set forth herein, and that Defendant
27 shall comply with all of the undertakings and agreements set forth therein.
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XI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

XII.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated: 3/23, 2009



JEREMY FOGEL
UNITED STATES DISTRICT JUDGE