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8 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
9 SAN FRANCISCO DIVISION
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11 SECURITIES AND EXCHANGE
COMMISSION,

12 Plaintiff,

13 vs.

14 MERCURY INTERACTIVE, et al.,

15 Defendants.
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Case No. 07-cv-02822 WHA/JSC

**[PROPOSED] FINAL JUDGMENT AS
TO DEFENDANT AMNON LANDAN**

18
19 The Securities and Exchange Commission having filed a Complaint and Defendant
20 Amnon Landan having entered a general appearance; consented to the Court's jurisdiction over
21 Defendant and the subject matter of this action; consented to entry of this Final Judgment without
22 admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings
23 of fact and conclusions of law; and waived any right to appeal from this Final Judgment:
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25 I.

26 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and
27 Defendant's agents, servants, employees, attorneys, and all persons in active concert or
28 participation with them who receive actual notice of this Final Judgment by personal service or

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

- 6
- 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

14 II.

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 17(a) of the Securities
19 Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the
20 use of any means or instruments of transportation or communication in interstate commerce or by
21 use of the mails, directly or indirectly:

- 22
- 23 (a) to employ any device, scheme, or artifice to defraud;
 - 24 (b) to obtain money or property by means of any untrue statement of a material fact
25 or any omission of a material fact necessary in order to make the statements
26 made, in light of the circumstances under which they were made, not misleading;
 - 27 or
- 28

1 (c) to engage in any transaction, practice, or course of business which operates or
2 would operate as a fraud or deceit upon the purchaser.
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4 III.

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

17 IV.

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

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2 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
3 and his agents, servants, employees, attorneys, and all persons in active concert or participation
4 with them who receive actual notice of this Final Judgment by personal service or otherwise are
5 permanently restrained and enjoined from violating Rule 13b2-1 of the Exchange Act [17 C.F.R.
6 240.13b2-1] by, directly or indirectly, falsifying or causing to be falsified any book, record, or
7 account subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].
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VI.

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10 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
11 and Defendant's agents, servants, employees, attorneys, and all persons in active concert or
12 participation with them who receive actual notice of this Final Judgment by personal service or
13 otherwise are permanently restrained and enjoined from violating Rule 13b2-2 [17 C.F.R. §
14 240.13b2-2], by, directly or indirectly,

- 15 (a) making or causing to be made a materially false or misleading statement, or
16 omitting to state or causing another person to omit to state, any material fact
17 necessary in order to make statements made, in light of the circumstances under
18 which such statements were made, not misleading, to an accountant in connection
19 with: (i) any audit, review or examination of the financial statements of an issuer,
20 or (ii) the preparation or filing of any document or report required to be filed with
21 the Commission;
- 22 (b) taking action, or directing another to take action, to coerce, manipulate, mislead, or
23 fraudulently influence any independent public or certified public accountant
24 engaged in the performance of an audit or review of an issuer's financial
25 statements required to be filed with the Commission, while knowing or while it
26 should have been known that such action, if successful, could result in rendering
27 the issuer's financial statements materially misleading.
28

VII.

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3 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
4 and Defendant's agents, servants, employees, attorneys, and all persons in active concert or
5 participation with them who receive actual notice of this Final Judgment by personal service or
6 otherwise are permanently restrained and enjoined from aiding and abetting any violation of
7 Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a),
8 78m(b)(2)(A), and 78m(b)(2)(B)] and Rules 12b-20, 13a-1, and 13a-13 [17 C.F.R. §§ 240.12b-
9 20, 240.13a-1, 240.13a-13], promulgated thereunder, directly or indirectly, by knowingly
10 providing substantial assistance to an issuer having securities registered pursuant to Section 12 of
11 the Exchange Act [15 U.S.C. § 78I], or any issuer which is required to file reports pursuant to
12 Section 15(d) of the Exchange Act [15 U.S.C. §78o(d)], by:

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

1 is permitted only in accordance with management's general or specific
2 authorization; and (4) the recorded accountability for assets is compared with the
3 existing assets at reasonable intervals and appropriate action is taken with respect
4 to any differences.

5 VIII.

6 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section
7 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)] and Section 20(e) of the Securities Act [15
8 U.S.C. § 77t(e)], Defendant is prohibited, for 5 years following the date of entry of this Final
9 Judgment, from acting as an officer or director of any issuer that has a class of securities
10 registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file
11 reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

12 IX.

13 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and
14 his agents, servants, employees, attorneys and all persons in active concert or participation with
15 them who receive actual notice of this Final Judgment by personal service or otherwise are
16 permanently restrained and enjoined from violating Exchange Act Rule 13a-14 [17 C.F.R.
17 § 240.13a-14], directly or indirectly, by falsely signing personal certifications indicating that
18 Defendant has reviewed periodic reports containing financial statements that an issuer filed with
19 the Commission pursuant to Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and that,
20 among other things, based on Defendant's knowledge,

21 (a) these reports do not contain any untrue statement of material fact or omit to
22 state a material fact necessary to make the statements made, in light of the circumstances under
23 which such statements were made, not misleading with respect to the period covered by the
24 report;

25 (b) Defendant has designed, evaluated the effectiveness of, and presented in
26 the report their conclusions about the effectiveness of, the issuer's internal controls; and
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1 (c) Defendant has disclosed to the issuer's auditors and the audit committee of the
2 board of directors any fraud, whether or not material, that involves management or other
3 employees who have a significant role in the registrant's internal control over financial reporting.
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X.

5 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is
6 liable for disgorgement of \$677,300, representing profits gained as a result of the conduct alleged
7 in the Complaint, together with prejudgment interest thereon in the amount of \$575,522 and a
8 civil penalty in the amount of \$1,000,000 pursuant to Section 20(d) of the Securities Act [15
9 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. Defendant
10 shall satisfy this obligation by paying \$2,252,822 to the Securities and Exchange Commission
11 within 30 days after entry of this Final Judgment.
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13 Defendant may transmit payment electronically to the Commission, which will provide
14 detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly
15 from a bank account via Pay.gov through the SEC website at
16 <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified check, bank
17 cashier's check, or United States postal money order payable to the Securities and Exchange
18 Commission, which shall be delivered or mailed to
19

20 Enterprise Services Center
21 Accounts Receivable Branch
22 6500 South MacArthur Boulevard
23 Oklahoma City, OK 73169

24 and shall be accompanied by a letter identifying the case title, civil action number, and name of
25 this Court; Amnon Landan as a defendant in this action; and specifying that payment is made
26 pursuant to this Final Judgment.

27 Defendant shall simultaneously transmit photocopies of evidence of payment and case
28 identifying information to the Commission's counsel in this action. By making this payment,

1 Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of
2 the funds shall be returned to Defendant. The Commission shall send the funds paid pursuant to
3 this Final Judgment to the United States Treasury.

4 The Commission may enforce the Court's judgment for disgorgement and prejudgment
5 interest by moving for civil contempt (and/or through other collection procedures authorized by
6 law) at any time after 14 days following entry of this Final Judgment. Defendant shall pay post
7 judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.
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9 XI.

10 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is ordered
11 to reimburse Mercury Interactive LLC \$5,064,678 pursuant to Section 304 of the Sarbanes-Oxley
12 Act of 2002 ("§ 304") [15 U.S.C. § 7243]. Of this amount, \$2,817,500 shall be deemed satisfied
13 by Defendant's prior return of vested options to Mercury Interactive Corporation. Defendant
14 shall satisfy the remainder of his reimbursement obligation by paying to Mercury Interactive LLC
15 \$2,247,178 within 30 days of the entry of this Final Judgment, the timely payment of which shall
16 constitute full satisfaction of Defendant's reimbursement obligation under §304. Defendant shall
17 deliver counsel for Plaintiff Securities and Exchange Commission proof of satisfying this
18 reimbursement obligation. Defendant shall not seek indemnification from Mercury Interactive
19 LLC or any other entity or person for the payments required by this paragraph.
20

21 XII.

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

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

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This Court shall retain such jurisdiction until February 21, 2017.

XIV.

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: February 21, 2013

