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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,

Case No. 07-cv-02822 WHA/JSC

12 Plaintiff,

**[PROPOSED] FINAL JUDGMENT AS
TO DEFENDANT DOUGLAS SMITH**

13 vs.

14 MERCURY INTERACTIVE, et al.,

15 Defendants.
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19 The Securities and Exchange Commission having filed a Complaint and Defendant
20 Douglas Smith 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:

24 I.

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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 Sections 17(a)(2) and 17(a)(3)
2 of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)] in the
3 offer or sale of any security by the use of any means or instruments of transportation or
4 communication in interstate commerce or by use of the mails, directly or indirectly:

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- 6 (a) to obtain money or property by means of any untrue statement of a material fact
7 or any omission of a material fact necessary in order to make the statements
8 made, in light of the circumstances under which they were made, not misleading;
9 or
- 10 (b) to engage in any transaction, practice, or course of business which operates or
11 would operate as a fraud or deceit upon the purchaser.
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13 II.

14 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is
15 liable for disgorgement of \$451,200, representing profits gained as a result of the conduct alleged
16 in the Complaint, and a civil penalty in the amount of \$100,000 pursuant to Section 20(d) of the
17 Securities Act [15 U.S.C. § 77t(d)]. Defendant's disgorgement obligation is deemed satisfied by
18 his previous \$451,200 payment to Mercury Interactive Corporation. Defendant shall satisfy his
19 remaining obligation by paying \$100,000 to the Securities and Exchange Commission within 60
20 days after entry of this Final Judgment.

21 Defendant may transmit payment electronically to the Commission, which will provide
22 detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly
23 from a bank account via Pay.gov through the SEC website at
24 <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified check, bank
25 cashier's check, or United States postal money order payable to the Securities and Exchange
26 Commission, which shall be delivered or mailed to

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1 Enterprise Services Center
2 Accounts Receivable Branch
3 6500 South MacArthur Boulevard
4 Oklahoma City, OK 73169

5 and shall be accompanied by a letter identifying the case title, civil action number, and name of
6 this Court; Douglas Smith as a defendant in this action; and specifying that payment is made
7 pursuant to this Final Judgment.

8 Defendant shall simultaneously transmit photocopies of evidence of payment and case
9 identifying information to the Commission's counsel in this action. By making this payment,
10 Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of
11 the funds shall be returned to Defendant. The Commission shall send the funds paid pursuant to
12 this Final Judgment to the United States Treasury.

13 III.

14 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is ordered
15 to reimburse Hewlett-Packard Corporation \$2,814,687 pursuant to Section 304 of the Sarbanes-
16 Oxley Act of 2002 [15 U.S.C. § 7243]. Of this amount, \$2,564,687 shall be deemed satisfied by
17 Defendant's prior repayments of cash to Mercury Interactive Corporation and his forgoing of his
18 right to exercise certain options. Defendant shall satisfy the remainder of his reimbursement
19 obligation by paying to Hewlett-Packard Corporation \$250,000 within 60 days of the entry of this
20 Final Judgment. Defendant shall deliver to counsel for Plaintiff Securities and Exchange
21 Commission proof of satisfying this reimbursement obligation. Defendant shall not seek
22 indemnification from Hewlett-Packard Corporation or any other entity or person for the payments
23 required by this paragraph.
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IV.

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

V.

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

VI.

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

