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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13 **SOUTHERN DIVISION**

14 SECURITIES AND EXCHANGE
COMMISSION,

15 Plaintiff,

16 v.

17 QUEST SOFTWARE, INC.,
18 VINCENT C. SMITH, JOHN J.
LASKEY, and KEVIN E. BROOKS,

19 Defendant.

Case No. SA CV 09-315-AG (mlg)

~~PROPOSED~~ FINAL JUDGMENT
AS TO DEFENDANT VINCENT C.
SMITH

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1 The Securities and Exchange Commission having filed a Complaint and
2 Defendant Vincent C. Smith (“Smith”) having entered a general appearance,
3 consented to the Court’s jurisdiction over Smith and the subject matter of this
4 action, consented to entry of this Final Judgment without admitting or denying the
5 allegations of the Complaint (except as to jurisdiction), waived findings of fact and
6 conclusions of law, and waived any right to appeal from this Final Judgment:

7 **I.**

8 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Smith and
9 his agents, servants, employees, attorneys, and all ^{other} persons in active concert or
10 participation with them who receive actual notice of this Final Judgment by
11 personal service or otherwise are permanently restrained and enjoined from
12 violating Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 (the
13 “Securities Act”), 15 U.S.C. §§ 77q(a)(2) and 77q(a)(3), in the offer or sale of any
14 security by the use of any means or instruments of transportation or
15 communication in interstate commerce or by use of the mails, directly or
16 indirectly, to obtain money or property by means of any untrue statement of a
17 material fact or any omission of a material fact necessary in order to make the
18 statements made, in light of the circumstances under which they were made, not
19 misleading; or to engage in any transaction, practice, or course of business which
20 operates or would operate as a fraud or deceit upon the purchaser.

21 **II.**

22 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED
23 that Smith and his agents, servants, employees, attorneys, and all ^{other} persons in active
24 concert or participation with them who receive actual notice of this Final Judgment
25 by personal service or otherwise are permanently restrained and enjoined from
26 violating Section 13(b)(5) of the Securities Exchange Act of 1934 (the “Exchange
27 Act”), 15 U.S.C. § 78m(b)(5), by knowingly circumventing or knowingly failing to
28 implement a system of internal accounting controls or knowingly falsifying any

1 book, record, or account described in Section 13(b)(2) of the Exchange Act, 15
2 U.S.C. § 78m(b)(2).

3 **III.**

4 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED
5 that Smith and his agents, servants, employees, attorneys, and all ^{other} persons in active
6 concert or participation with them who receive actual notice of this Final Judgment
7 by personal service or otherwise are permanently restrained and enjoined from
8 violating Exchange Act Rule 13a-14, 17 C.F.R. § 240.13a-14, directly or
9 indirectly, by falsely signing personal certifications indicating that he has reviewed
10 periodic reports containing financial statements which an issuer filed with the
11 Commission pursuant to Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a),
12 and that, based on his knowledge,

- 13 (a) these reports do not contain any untrue statement of material fact or
14 omit to state a material fact necessary to make the statements made, in
15 light of the circumstances under which such statements were made,
16 not misleading with respect to the period covered by the report; and
17 (b) that information contained in these reports fairly present, in all
18 material respects, the financial condition and results of the issuer's
19 operations.

20 **IV.**

21 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED
22 that Smith and his agents, servants, employees, attorneys, and all ^{other} persons in active
23 concert or participation with them who receive actual notice of this Final Judgment
24 by personal service or otherwise are permanently restrained and enjoined from
25 violating Exchange Act Rule 13b2-1, 17 C.F.R. § 240.13b2-1 by, directly or
26 indirectly, falsifying or causing to be falsified, any book, record or account subject
27 to Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. § 78m(b)(2)(A).

V.

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2 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED
3 that Smith and his agents, servants, employees, attorneys, and all ^{other} persons in active
4 concert or participation with them who receive actual notice of this Final Judgment
5 by personal service or otherwise are permanently restrained and enjoined from
6 violating Exchange Act Rule 13b2-2, 17 C.F.R. § 240.13b2-2 by, directly or
7 indirectly:

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

23 VI.

24 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Smith
25 and his agents, servants, employees, attorneys, and all ^{other} persons in active concert or
26 participation with them who receive actual notice of this Final Judgment by
27 personal service or otherwise are permanently restrained and enjoined from
28 violating, directly or indirectly, Section 14(a) of the Exchange Act, 15 U.S.C. §

1 78n(a), and Rule 14a-9 promulgated thereunder, 17 C.F.R. § 240.14a-9, by using
2 the mails or by any means or instrumentality of interstate commerce or of any
3 facility of a national securities exchange to solicit by means of any proxy
4 statement, form of proxy, notice of meeting or other communication, written or
5 oral, containing any statement which, at the time and in the light of the
6 circumstances under which it is made, is false or misleading with respect to any
7 material fact, or which omits to state any material fact necessary in order to make
8 the statements therein not false or misleading or necessary to correct any statement
9 in any earlier communications with respect to the solicitation of a proxy for the
10 same meeting or subject matter which has become false or misleading.

11 **VII.**

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

22 **VIII.**

23 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED
24 that Smith and his agents, servants, employees, attorneys, and all ^{other} persons in active
25 concert or participation with them who receive actual notice of this Final Judgment
26 by personal service or otherwise are permanently restrained and enjoined from
27 aiding and abetting any violation of Section 13(a) of the Exchange Act, 15 U.S.C.
28 § 78m(a), and Rules 12b-20, 13a-1, and 13a-13 thereunder, 17 C.F.R. §§ 240.12b-

1 20, 240.13a-1, and 240.13a-13, by knowingly providing substantial assistance to an
2 issuer which has a class of securities registered pursuant to Section 12 of the
3 Exchange Act, 15 U.S.C. § 78l, that files quarterly and annual reports with the
4 Commission on Forms 10-Q and Forms 10-K that fail to contain material
5 information necessary to make the required statements in the Forms 10-Q and
6 Forms 10-K, in light of the circumstances under which they are made, not
7 misleading.

8 **IX.**

9 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED
10 that Smith and his agents, servants, employees, attorneys, and all ^{other} persons in active
11 concert or participation with them who receive actual notice of this Final Judgment
12 by personal service or otherwise are permanently restrained and enjoined from
13 aiding and abetting any violation of Section 13(b)(2)(A) of the Exchange Act, 15
14 U.S.C. § 78m(b)(2)(A), by knowingly providing substantial assistance to an issuer
15 which has a class of securities registered pursuant to Section 12 of the Exchange
16 Act, 15 U.S.C. § 78l, or that is required to file reports pursuant to Section 15(d) of
17 the Exchange Act, 15 U.S.C. § 78o(d), in failing to make and keep books, records,
18 and accounts, which, in reasonable detail, accurately and fairly reflect the
19 transactions and disposition of the assets of the issuer.

20 **X.**

21 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED
22 that Smith and his agents, servants, employees, attorneys, and all ^{other} persons in active
23 concert or participation with them who receive actual notice of this Final Judgment
24 by personal service or otherwise are permanently restrained and enjoined from
25 aiding and abetting any violation of Section 13(b)(2)(B) of the Exchange Act, 15
26 U.S.C. § 78m(b)(2)(B), by knowingly providing substantial assistance to an issuer
27 which has a class of securities registered pursuant to Section 12 of the Exchange
28 Act, 15 U.S.C. § 78l, or that is required to file reports pursuant to Section 15(d) of

1 the Exchange Act, 15 U.S.C. § 78o(d), in failing to devise and maintain a system
2 of internal accounting controls sufficient to provide reasonable assurances that
3 (i) transactions are executed in accordance with management's general or specific
4 authorization; (ii) transactions are recorded as necessary (a) to permit preparation
5 of financial statements in conformity with generally accepted accounting principles
6 or any other criteria applicable to such statements, and (b) to maintain
7 accountability for assets; (iii) access to assets is permitted only in accordance with
8 management's general or specific authorization; and (iv) the recorded
9 accountability for assets is compared with the existing assets at reasonable
10 intervals and appropriate action is taken with respect to any differences.

11 **XI.**

12 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED
13 that Smith is liable for a civil penalty in the amount of \$150,000.00 pursuant to
14 Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the
15 Exchange Act, 15 U.S.C. § 78u(d)(3). Smith shall satisfy this obligation by paying
16 \$150,000 within ten (10) business days after entry of this Final Judgment by
17 certified check, bank cashier's check, or United States postal money order payable
18 to the Securities and Exchange Commission. The payment shall be delivered or
19 mailed to the Office of Financial Management, Securities and Exchange
20 Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3,
21 Alexandria, Virginia 22312, and shall be accompanied by a letter identifying
22 Vincent C. Smith as a defendant in this action, setting forth the title and civil action
23 number of this action and the name of this Court, and specifying that payment is
24 made pursuant to this Final Judgment. Smith shall pay post-judgment interest on
25 any delinquent amounts pursuant to 28 U.S.C. § 1961. The Commission shall
26 remit the funds paid pursuant to this paragraph to the United States Treasury.

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XII.

IT IS HEREBY 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 Smith shall comply with all of the undertakings and agreements set forth therein.

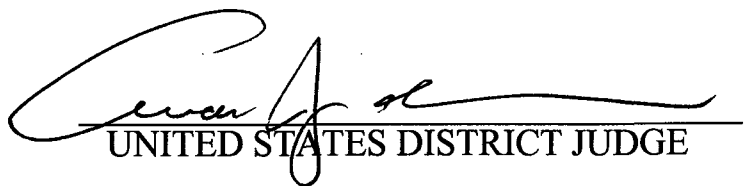
XIII.

IT IS HEREBY 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.

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: APRIL 1, 2009


UNITED STATES DISTRICT JUDGE