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NORTHERN DISTRICT OF CALIFORNIA

1 MARC J. FAGEL (Cal. Bar No. 154425)
MICHAEL S. DICKE (Cal. Bar No. 158187)
2 JINA L. CHOI (Admitted in New York)
choij@sec.gov
3 JENNIFER J. LEE (Cal Bar No. 261399)
leejen@sec.gov
4

Attorneys for Plaintiff
5 SECURITIES AND EXCHANGE COMMISSION
44 Montgomery Street, 26th Floor
6 San Francisco, California 94104
Telephone: (415) 705-2500
7 Facsimile: (415) 705-2501

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 SAN JOSE DIVISION

11 SECURITIES AND EXCHANGE COMMISSION,

CV 12 1743
Case No.

12 Plaintiff,

~~PROPOSED~~ FINAL JUDGMENT AS
TO ALL DEFENDANTS

13 v.

14 BENEDICT VAN, HEREUARE, INC., and
ECITY, INC.

15 Defendants.

16 The Securities and Exchange Commission having filed a Complaint and Defendants
17 Benedict Van, hereUare, Inc. ("hereUare"), and eCity, Inc. ("eCity") (collectively "Defendants")
18 having each entered a general appearance; consented to the Court's jurisdiction over Defendants
19 and the subject matter of this action; consented to entry of this Final Judgment without admitting
20 or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact
21 and conclusions of law; and waived any right to appeal from this Final Judgment:

22 I.

23 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants and their
24 agents, servants, employees, attorneys, and all persons in active concert or participation with
25 them who receive actual notice of this Final Judgment by personal service or otherwise are
26 permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the
27 Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5(b)
28 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of

1 interstate commerce, or of the mails, or of any facility of any national securities exchange, in
2 connection with the purchase or sale of any security to make any untrue statement of a material
3 fact or to omit to state a material fact necessary in order to make the statements made, in the light
4 of the circumstances under which they were made, not misleading.

5 II.

6 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
7 Defendants and their agents, servants, employees, attorneys, and all persons in active concert or
8 participation with them who receive actual notice of this Final Judgment by personal service or
9 otherwise are permanently restrained and enjoined from violating Section 17(a)(2) of the
10 Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any
11 security by the use of any means or instruments of transportation or communication in interstate
12 commerce or by use of the mails, directly or indirectly, to obtain money or property by means of
13 any untrue statement of a material fact or any omission of a material fact necessary in order to
14 make the statements made, in light of the circumstances under which they were made, not
15 misleading.

16 III.

17 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
18 Van and Defendant hereUare, as well as their agents, servants, employees, attorneys, and all
19 persons in active concert or participation with them who receive actual notice of this Final
20 Judgment by personal service or otherwise, are permanently restrained and enjoined from
21 violating Section 5 of the Securities Act [15 U.S.C. § 77e] by, directly or indirectly, in the
22 absence of any applicable exemption:

- 23 (a) Unless a registration statement is in effect as to a security, making use of any
24 means or instruments of transportation or communication in interstate commerce
25 or of the mails to sell such security through the use or medium of any prospectus
26 or otherwise;
- 27 (b) Unless a registration statement is in effect as to a security, carrying or causing to
28 be carried through the mails or in interstate commerce, by any means or

1 instruments of transportation, any such security for the purpose of sale or for
2 delivery after sale; or

3 (c) Making use of any means or instruments of transportation or communication in
4 interstate commerce or of the mails to offer to sell or offer to buy through the use
5 or medium of any prospectus or otherwise any security, unless a registration
6 statement has been filed with the Commission as to such security, or while the
7 registration statement is the subject of a refusal order or stop order or (prior to the
8 effective date of the registration statement) any public proceeding or examination
9 under Section 8 of the Securities Act [15 U.S.C. § 77h].

10 IV.

11 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section
12 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], Defendant Van is permanently prohibited
13 following the date of entry of this Final Judgment, from acting as an officer or director of any
14 issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15
15 U.S.C. § 78i] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15
16 U.S.C. § 78o(d)].

17 V.

18 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
19 Van is liable for disgorgement of \$125,000.00, representing profits gained as a result of the
20 conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of
21 \$34,130.87, for a total of \$159,130.87. Based on Defendant Van's sworn representations in his
22 Statement of Financial Condition dated March 19, 2012, and other documents and information
23 submitted to the Commission, however, the Court is not ordering Defendant Van to pay a civil
24 penalty, and payment of all of the disgorgement and pre-judgment interest thereon is waived.
25 The determination not to impose a civil penalty and to waive payment of all of the disgorgement
26 and pre-judgment interest is contingent upon the accuracy and completeness of Defendant Van's
27 Statement of Financial Condition. If at any time following the entry of this Final Judgment the
28 Commission obtains information indicating that Defendant Van's representations to the

1 Commission concerning his assets, income, liabilities, or net worth were fraudulent, misleading,
2 inaccurate, or incomplete in any material respect as of the time such representations were made,
3 the Commission may, at its sole discretion and without prior notice to Defendant Van, petition
4 the Court for an order requiring Defendant Van to pay the unpaid portion of the disgorgement,
5 pre-judgment and post-judgment interest thereon, and the maximum civil penalty allowable
6 under the law. In connection with any such petition, the only issue shall be whether the financial
7 information provided by Defendant was fraudulent, misleading, inaccurate, or incomplete in any
8 material respect as of the time such representations were made. In its petition, the Commission
9 may move this Court to consider all available remedies, including, but not limited to, ordering
10 Defendant Van to pay funds or assets, directing the forfeiture of any assets, or sanctions for
11 contempt of this Final Judgment. The Commission may also request additional discovery.
12 Defendant Van may not, by way of defense to such petition: (1) challenge the validity of the
13 Consent or this Final Judgment; (2) contest the allegations in the Complaint filed by the
14 Commission; (3) assert that payment of disgorgement, pre-judgment and post-judgment interest
15 or a civil penalty should not be ordered; (4) contest the amount of disgorgement and pre-
16 judgment and post-judgment interest; (5) contest the imposition of the maximum civil penalty
17 allowable under the law; or (6) assert any defense to liability or remedy, including, but not
18 limited to, any statute of limitations defense.

19 VI.


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

22 VII.

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

25 The Clerk shall close the file.

26 Dated: June 12, 2012

27 
28 UNITED STATES DISTRICT JUDGE