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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, LLC, et al.,

15 Defendants.
16
17

Case No. 07-cv-02822 WHA/JSC

**~~PROPOSED~~ FINAL JUDGMENT AS
TO DEFENDANT SUSAN SKAER**

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

24 I.

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

- 5
- 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 HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
15 and Defendant’s agents, servants, employees, attorneys in fact, and all persons in active concert
16 or 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 14(a) of the Securities
18 Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78n(a)] and Rule 14a-9 [17 C.F.R. §
19 240.14a-9], promulgated thereunder, directly or indirectly, by making solicitations by means of a
20 proxy statement, form of proxy, notice of meeting or other communication, written or oral,
21 containing any statement which, at the time and in the light of the circumstances under which it is
22 made, is false or misleading with respect to any material fact, or which omits to state any material
23 fact necessary in order to make the statements therein not false or misleading or necessary to
24 correct any statement in any earlier communication with respect to the solicitation of a proxy for
25 the same meeting or subject matter which has become false or misleading.

26 III.

27 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
28 and Defendant’s agents, servants, employees, attorneys in fact, and all persons in active concert

1 or participation with them who receive actual notice of this Final Judgment by personal service or
2 otherwise are permanently restrained and enjoined from violating Section 13(b)(5) of the
3 Exchange Act [15 U.S.C. § 78m(b)(5)] by knowingly circumventing or knowingly failing to
4 implement a system of internal accounting controls or knowingly falsifying or causing to be
5 falsified any book, record, or account subject to Section 13(b)(2)(A) of the Exchange Act [15
6 U.S.C. § 78m(b)(2)(A)].
7

8 IV.

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

18 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
19 and Defendant's agents, servants, employees, attorneys in fact, and all persons in active concert
20 or participation with them who receive actual notice of this Final Judgment by personal service or
21 otherwise are permanently restrained and enjoined from violating Rule 13b2-2 under the
22 Exchange Act [17 C.F.R. § 240.13b2-2] by, directly or indirectly,
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- 24 (a) making or causing to be made a materially false or misleading statement, or
25 omitting to state or causing another person to omit to state, any material fact
26 necessary in order to make statements made, in light of the circumstances under
27 which such statements were made, not misleading, to an accountant in connection
28 with: (i) any audit, review or examination of the financial statements of an issuer,

1 or (ii) the preparation or filing of any document or report required to be filed with
2 the Commission; or

- 3 (b) taking action, or directing another to take action, to coerce, manipulate, mislead, or
4 fraudulently influence any independent public or certified public accountant
5 engaged in the performance of an audit or review of an issuer's financial
6 statements required to be filed with the Commission, while knowing or while it
7 should have been known that such action, if successful, could result in rendering
8 the issuer's financial statements materially misleading.

9 VI.

10 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
11 and Defendant's agents, servants, employees, attorneys in fact, and all persons in active concert
12 or participation with them who receive actual notice of this Final Judgment by personal service or
13 otherwise are permanently restrained and enjoined from aiding and abetting any violation of
14 Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a),
15 78m(b)(2)(A), and 78m(b)(2)(B)] and Rules 12b-20, 13a-1, and 13a-13 [17 C.F.R. §§ 240.12b-
16 20, 240.13a-1, 240.13a-13], promulgated thereunder, directly or indirectly, by knowingly
17 providing substantial assistance to an issuer having securities registered pursuant to Section 12 of
18 the Exchange Act [15 U.S.C. § 78l], or any issuer which is required to file reports pursuant to
19 Section 15(d) of the Exchange Act [15 U.S.C. §78o(d)], by:

- 20 (a) filing or causing to be filed with the Commission any report required to be filed
21 with the Commission pursuant to Section 13(a) of the Exchange Act [15 U.S.C. §
22 78m(a)] and the rules and regulations promulgated thereunder, which contains any
23 untrue statement of material fact, which omits to state any material fact necessary
24 in order to make the statements made, in light of the circumstances under which
25 they were made, not misleading, or which omits to disclose any information
26 required to be disclosed; or

- 1 (b) failing to make and keep books, records, and accounts which, in reasonable detail,
2 accurately and fairly reflect the transactions and dispositions of the assets of the
3 issuer; or
4 (c) failing to devise and maintain a system of internal accounting controls sufficient to
5 provide reasonable assurances that: (1) transactions are executed in accordance
6 with management's general or specific authorization; (2) transactions are recorded
7 as necessary (a) to permit preparation of financial statements in conformity with
8 generally accepted accounting principles (GAAP) or any other criteria applicable
9 to such statements and (b) to maintain accountability for assets; (3) access to assets
10 is permitted only in accordance with management's general or specific
11 authorization; and (4) the recorded accountability for assets is compared with the
12 existing assets at reasonable intervals and appropriate action is taken with respect
13 to any differences.

14 VII.

15 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for
16 disgorgement of \$423,136, representing profits gained as a result of the conduct alleged in the
17 Complaint, together with prejudgment interest thereon in the amount of \$204,901 and a civil
18 penalty in the amount of \$225,000 pursuant to Section 20(d) of the Securities Act [15 U.S.C. §
19 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. Defendant shall
20 satisfy this obligation by paying \$853,037 to the Securities and Exchange Commission within 14
21 days after entry of this Final Judgment.
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23 Defendant may transmit payment electronically to the Commission, which will provide
24 detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly
25 from a bank account via Pay.gov through the SEC website at
26 <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified check, bank
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1 cashier's check, or United States postal money order payable to the Securities and Exchange
2 Commission, which shall be delivered or mailed to

3 Enterprise Services Center
4 Accounts Receivable Branch
5 6500 South MacArthur Boulevard
6 Oklahoma City, OK 73169

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

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

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

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20 VIII.

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

24 IX.

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

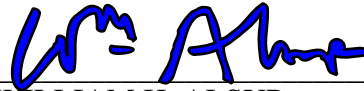
27 This Court shall retain such jurisdiction until March 18, 2017.
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X.

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: March 18, 2013



WILLIAM H. ALSUP
UNITED STATES DISTRICT JUDGE