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18 *Mercury Pension Fund Group and the Class*

19 **UNITED STATES DISTRICT COURT**
20 **NORTHERN DISTRICT OF CALIFORNIA**
21 **SAN JOSE DIVISION**

22 IN RE MERCURY INTERACTIVE CORP.
23 SECURITIES LITIGATION

) Master File No. 5:05-CV-3395-JF (PVT)

24 This Document Relates To:

) ~~[PROPOSED]~~ **REVISED ORDER**
) **SETTING DATES TO PROVIDE**
) **ADDITIONAL NOTICE TO THE CLASS**
) **AND SET A HEARING REGARDING**
) **ATTORNEYS' FEES AND EXPENSES**

25 ALL ACTIONS

) Date: , 2010
) Time: 9:00 a.m.
) Place: Courtroom 3
) Before: Honorable Jeremy Fogel

1 WHEREAS, a class action is pending before the Court entitled *In re Mercury Interactive*
2 *Corporation Securities Litigation*, Master File No. 5:05-CV-3395-JF;

3 WHEREAS, the parties entered into a Stipulation of Settlement dated as of October 31,
4 2007;

5 WHEREAS, by Order entered June 4, 2008, the Court granted preliminary approval to
6 the Settlement and, therein, appointed the firm Complete Claims Solutions (later named “Rust
7 Consulting”) as claims administrator to mail the Hearing Notice to all previously identified
8 recipients of the Notice of Pendency and Proposed Settlement of Class Action;

9 WHEREAS, on September 25, 2008, the Court entered the Final Judgment and Order of
10 Dismissal with Prejudice, wherein the Court certified the Settlement Class and finally approved
11 the Settlement;

12 WHEREAS, no Class Members appealed the Court’s entry of Final Judgment and Order
13 of Dismissal with Prejudice

14 WHEREAS, the Court’s approval of the Settlement is final;

15 WHEREAS, in accordance with the guidance of the Court of Appeals for the Ninth
16 Circuit’s opinion in *New York State Teachers’ Retirement System v. Archdiocese of Milwaukee*
17 *Supporting Fund*, No. 08-17372 (August 18, 2010) (“Opinion”) and Fed. R. Civ. P. 23(h), Lead
18 Plaintiff Mercury Pension Fund Group (collectively referred to herein as the “Lead Plaintiff”)
19 have filed a Notice of Motion for an Order Setting Dates to Provide Additional Notice to Class
20 Members and Set a Hearing Regarding Attorneys’ Fees and Expenses (“Motion”);

21 WHEREAS, Lead Plaintiff has determined that the notice program shall consist of the
22 dissemination of the Proposed Notice of Fairness Hearing (“Hearing Notice”), annexed hereto as
23 Exhibit A;

24 WHEREAS, Lead Plaintiff has determined that the notice program is in accord with the
25 Ninth Circuit’s guidance as set forth in the Opinion; and

26 WHEREAS, the Court has considered the Lead Plaintiff’s submission;

27 NOW, THEREFORE, IT IS HEREBY ORDERED:
28

1 1. The Court hereby approves the Hearing Notice substantially in the form annexed
2 hereto as Exhibit A. The form and content of the notice program described herein, and the
3 method set forth herein for notifying class members, meets the requirements of Rules 23 of the
4 Federal Rules of Civil Procedure, Section 21D(a)(7) of the Securities Exchange Act of 1934, 15
5 U.S.C. §78u-4(a)(7), as amended by the Private Securities Litigation Reform Act of 1995, and
6 due process, and constitutes the best notice practicable under the circumstances, and shall
7 constitute due and sufficient notice to all persons and entities entitled thereto.

8 2. Within 30 calendar days of the entry of this order, Lead Counsel shall utilize Rust
9 Consulting, Inc., the previously approved claims administrator, to disseminate the Hearing
10 Notice to class members.

11 3. Lead Counsel shall file with the Court a renewed Motion for Approval of an
12 Award of Attorneys' Fees and Expenses ("Fee Motion") within 30 calendar days of the entry of
13 this order.

14 4. Lead Counsel shall also make available on the claims administrator's website
15 (www.mercuryinteractivesecuritiessettlement.com) a copy of any and all papers filed in
16 connection with the Fee Motion no later than three business days after the filing of such papers
17 with this Court.

18 5. Any Claimant may appear and show cause, and any other Member of the Class
19 who can show an interest in the issue of attorneys' fees may appear and show cause, if he, she or
20 it has any reason, why attorneys' fees and expenses should or should not be awarded to counsel
21 for the plaintiffs, or why the expenses of the Lead Plaintiffs should or should not be awarded;
22 provided, however, that no Class Member or any other Person shall be heard or entitled to
23 contest such matters, unless that Class Member has delivered by hand or sent by first-class mail
24 written objections and copies of any papers and briefs such that they are received by hand or
25 postmarked on or before 90 calendar days from the date of this order, by Labaton Sucharow
26 LLP, Attn: Michael H. Rogers, 140 Broadway, New York, NY 10005; Glancy Binkow &
27 Goldberg, Attn: Peter Binkow, 1801 Avenue of the Stars, Suite 311, Los Angeles, CA 90067,
28 and filed with the Clerk of the United States District Court for the Northern District of

1 California. Any Member of the Class who does not make his, her or its objection in the manner
2 provided shall be deemed to have waived such objection and shall forever be foreclosed from
3 making any objection to the award of attorneys fees and expenses to counsel for the plaintiffs or
4 expenses of the Lead Plaintiffs, unless otherwise ordered by the Court.

5 6. Any Member of the Class may enter an appearance in the Litigation, at their own
6 expense, individually or through counsel of their own choice, in which case such counsel must
7 file with the Clerk of the Court and deliver to Plaintiffs' Lead Counsel and Mercury Counsel a
8 notice of such appearance. Class Members who do not enter an appearance, will be represented
9 by Plaintiffs' Lead Counsel.

10 7. Lead Counsel shall have the opportunity to file a reply brief in support of the Fee
11 Motion, which shall be filed with the Court on or before 105 calendar days from the date of this
12 order.

13 8. A hearing is hereby scheduled before this Court on February 18, 2011 at 9:00 a.m.
14 The Court reserves the right to adjourn the date of the hearing without further notice to the
15 Members of the Class.

16 Dated: October 15, 2010
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20 The Honorable Jeffrey Vogel
United States District Court for the Northern District
of California
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EXHIBIT A

1 **UNITED STATES DISTRICT COURT**
2 **NORTHERN DISTRICT OF CALIFORNIA**
3 **SAN JOSE DIVISION**

4 In re MERCURY INTERACTIVE CORP.
5 SECURITIES LITIGATION

Master File No. 5:05-CV-3395-JF (PVT)

6 CLASS ACTION

7 This Document Relates To:

NOTICE OF FAIRNESS HEARING

8 ALL ACTIONS

EXHIBIT A

9
10 **TO: ALL PERSONS WHO PURCHASED MERCURY INTERACTIVE**
11 **CORPORATION (“MERCURY”) SECURITIES (INCLUDING COMMON**
12 **STOCK, OPTIONS, OTHER EQUITY SECURITIES, AND DEBT SECURITIES)**
13 **DURING THE PERIOD BEGINNING SEPTEMBER 8, 2001 THROUGH JULY 3,**
14 **2006**

15 You were previously mailed a copy of the Notice of Pendency and Proposed Settlement
16 of Class Action (“Notice”) in this case.

17 YOU ARE HEREBY NOTIFIED that a hearing will be held at the United States District
18 Court for the Northern District of California (the “District Court”) on February 18, 2011, at 9:00
19 a.m., before the Honorable Jeremy Fogel at the United States Courthouse, 280 South First
20 Street, San Jose, California, solely for the purpose of determining whether the application of
21 Plaintiffs’ Lead Counsel for the payment of attorneys’ fees and reimbursement of expenses and
22 the Lead Plaintiffs’ expenses incurred in connection with the prosecution and Settlement of the
23 above-captioned action (the “Litigation”) should be approved.

24 Notice of the \$117,500,00 Settlement of this Litigation and the awarding of legal fees
25 was mailed in mid-2008. The Notice provided that Plaintiffs’ Lead Counsel would apply to the
26 Court for attorneys’ fees in the amount of 25% of the Settlement Fund and reimbursement of
27 out-of-pocket expenses not to exceed \$975,000 to be paid from the Settlement Fund. The Notice
28 also provided that the deadline for objections to the Settlement, the Plan of Allocation or the

1 application for attorneys' fees and expenses ("Fee Motion") was September 4, 2008 and that a
2 Fairness Hearing, in which the District Court would decide whether to approve the Settlement,
3 Plan of Allocation and Fee Motion, would be held on September 25, 2008. In response to the
4 Notice the New York State Teachers' Retirement System ("NY Teachers") filed an objection to
5 the request for attorneys' fees. On September 26, 2008 the District Court approved the
6 Settlement and Fee Motion. NY Teachers appealed the award of attorneys' fees to the United
7 States Court of Appeals for the Ninth Circuit ("Ninth Circuit"). On August 18, 2010, the Ninth
8 Circuit vacated and remanded the attorneys' fee award to the District Court for further
9 proceedings because it found the procedure inadequate whereby class members were required to
10 object prior to the date the Fee Motion was filed.
11

12 A Fee Motion has been filed with the District Court by Plaintiffs' Lead Counsel. Counsel
13 is seeking the amount of attorneys' fees and expenses previously applied for. If the amount
14 requested is approved by the Court, the average cost per share will be \$0.35. If you are a
15 Member of the Class and wish to object to this Fee Motion, or comment upon the Ninth Circuit
16 Fee Award¹, you must file a written objection with the District Court by [____], 2011. The
17 objection must contain a statement of the reasons for objection. Any Class Member who timely
18 and validly submits a written objection may appear and be heard at the hearing on February 18,
19 2011. To object to the Fee Motion, your objection must be received by the following, or
20 postmarked, on or before [____], 2011:
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26 _____
27 ¹ On October 1, 2010, the Ninth Circuit awarded attorneys' fees of \$171,490.00 to the lawyers
28 who represented NY Teachers in their appeal (the "Ninth Circuit Fee Award"). At the
_____, 2011 hearing, the District Court will also determine whether the Ninth Circuit Fee
Award will come out of or be awarded in addition to Lead Counsel's Fee Award.

1 CLERK OF THE COURT
2 UNITED STATES DISTRICT COURT
3 NORTHERN DISTRICT OF CALIFORNIA
4 280 South First Street
5 San Jose, CA 95113

6 Lead Counsel for Plaintiffs:

7 LABATON SUCHAROW LLP
8 ATTN: MICHAEL H. ROGERS
9 140 Broadway
10 New York, NY 10005

11 GLANCY BINKOW & GOLDBERG LLP
12 ATTN: PETER A. BINKOW
13 1801 Avenue of the Stars, Suite 311
14 Los Angeles, CA 90067

15 You may obtain a copy of the Fee Motion and the Notice by writing to *Mercury*
16 *Interactive Securities Litigation*, c/o Rust Consulting, Inc., [P.O. Box 24715, West Palm Beach,
17 FL 33416], or may download a copy from the internet at
18 www.MercuryInteractiveSecuritiesSettlement.com. Please refer to the Notice for further
19 information on the Settlement and attorneys' fees.

20 **SPECIAL NOTICE TO NOMINEES**

21 If you held any Mercury securities purchased during the Class Period as nominee for a
22 beneficial owner, then, within ten (10) days after you receive this Notice, you must either: (1)
23 send a statement to the Claims Administrator confirming that you have the authority to object on
24 behalf of the beneficial owner or (2) if you do not have authority to object, then you must either
25 send a copy of this Notice by first class mail to all such Persons; or provide a list of the names
26 and addresses of such Persons you filed on behalf of to the Claims Administrator at:

27 *Mercury Interactive Securities Litigation*
28 Claims Administrator
c/o Rust Consulting, Inc.
[P.O. Box 24715
West Palm Beach, FL 33416]

PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE
REGARDING THIS NOTICE. If you have any questions about the settlement, you may contact
Plaintiffs' Lead Counsel at the address listed above.

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DATED: _____

BY ORDER OF THE COURT
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Mailing Information for a Case 5:05-cv-03395-JF

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

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- **Daniel Amon Zaheer**
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Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

Russel N. Jacobson

,

Lead Plaintiffs

,

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c/o Schubert & Reed LLP,Three Embarcadero Center, Suite 1650
San Francisco, CA 94111