

1 JOEL H. BERNSTEIN (admitted *pro hac vice*)  
 2 LOUIS GOTTLIEB (admitted *pro hac vice*)  
 3 MICHAEL H. ROGERS (admitted *pro hac*  
 4 *vice*)  
 5 LABATON SUCHAROW LLP  
 6 140 Broadway  
 7 New York, New York 10005  
 8 Telephone: (212) 907-0700  
 9 Telecopier: (212) 818-0477

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10 LIONEL Z. GLANCY, #134180  
 11 PETER A. BINKOW, #173848  
 12 GLANCY BINKOW & GOLDBERG LLP  
 13 1801 Avenue of the Stars, Suite 311  
 14 Los Angeles, California 90067  
 15 Telephone: (310) 201-9150  
 16 Telecopier: (310) 201-9160

17 *Co-Lead Counsel for Lead Plaintiff,*  
 18 *Mercury Pension Fund Group and the Class*

19 JAMES M. WAGSTAFFE, #95535  
 20 DANIEL A. ZAHEER #237118  
 21 KERR & WAGSTAFFE LLP  
 22 100 Spear Street, Suite 1800  
 23 San Francisco, CA 94105-1528  
 24 Telephone: (415) 371-8500  
 25 Telecopier: (415) 371-0500

26 *Counsel for Lead Plaintiff,*  
 27 *Mercury Pension Fund Group and the Class*

28 **UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

IN RE MERCURY INTERACTIVE CORP.	)	Master File No. 5:05-CV-3395-JF (PVT)
SECURITIES LITIGATION	)	
	)	<b>[PROPOSED] ORDER APPROVING</b>
	)	<b>REVISED HEARING NOTICE</b>
This Document Relates To:	)	
	)	No Hearing Requested
	)	Before: Honorable Jeremy Fogel
ALL ACTIONS	)	
	)	
	)	
	)	
	)	

[PROPOSED] ORDER APPROVING REVISED HEARING NOTICE  
 MASTER FILE NO. 5:05-CV-3395-JF (PVT)

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 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 (“Original Hearing Notice  
21 Motion”) (Docket No. 387);

22           WHEREAS, by order entered October 19, 2010, the Court approved the proposed Notice  
23 of Fairness Hearing (“Original Hearing Notice”) and ordered that the notice be disseminated by  
24 November 18, 2010 (Docket No. 392);

25           WHEREAS, the deadline for disseminating the Original Hearing Notice has not occurred  
26 and the notice has not been disseminated;

27           WHEREAS, subsequent to the Court’s October 19, 2010 order, Lead Counsel and New  
28 York State Teachers’ Retirement System (“NYSTERS”) reached an agreement concerning the

1 amount of attorneys' fees that Lead Counsel would seek in its renewed motion requesting an  
2 award of attorneys' fees;

3 WHEREAS, a stipulation memorializing this agreement has been executed;

4 WHEREAS, the Original Hearing Notice must be amended to reflect the revised amount  
5 of attorneys' fees that Lead Counsel will be seeking;

6 WHEREAS, the Court has considered the Lead Counsel's submission and the revised  
7 Notice of Fairness Hearing ("Revised Hearing Notice"), annexed hereto as Exhibit A;

8 NOW, THEREFORE, IT IS HEREBY ORDERED:

9 1. The Court hereby approves the Revised Hearing Notice substantially in the form  
10 annexed hereto as Exhibit A. The form and content of the notice program described herein, and  
11 the method set forth herein for notifying class members, meets the requirements of Rules 23 of  
12 the Federal Rules of Civil Procedure, Section 21D(a)(7) of the Securities Exchange Act of 1934,  
13 15 U.S.C. § 78u-4(a)(7), as amended by the Private Securities Litigation Reform Act of 1995,  
14 and due process, and constitutes the best notice practicable under the circumstances, and shall  
15 constitute due and sufficient notice to all persons and entities entitled thereto.

16 2. On or before December 14, 2010, Lead Counsel shall utilize Rust Consulting,  
17 Inc., the previously approved claims administrator, to mail the Revised Hearing Notice to all  
18 class members who can be identified with reasonable effort.

19 3. On or before December 14, 2010, Lead Counsel shall file with the Court a  
20 renewed Motion for Approval of an Award of Attorneys' Fees ("Fee Motion").

21 4. Lead Counsel shall also make available on the claims administrator's website  
22 ([www.mercuryinteractivesecuritiessettlement.com](http://www.mercuryinteractivesecuritiessettlement.com)) a copy of any and all papers filed in  
23 connection with the Fee Motion no later than three business days after the filing of such papers  
24 with this Court.

25 5. Any Claimant may appear and show cause, and any other Member of the Class  
26 who can show an interest in the issue of attorneys' fees may appear and show cause, if he, she or  
27 it has any reason, why attorneys' fees should or should not be awarded to counsel for the  
28 plaintiffs, provided, however, that no Class Member or any other Person shall be heard or

1 entitled to contest such matters, unless that Class Member has delivered by hand or sent by first-  
2 class mail written objections and copies of any papers and briefs such that they are received by  
3 hand or postmarked on or before January 13, 2011, by Labaton Sucharow LLP, Attn: Michael  
4 H. Rogers, 140 Broadway, New York, NY 10005; Glancy Binkow & Goldberg, Attn: Peter  
5 Binkow, 1801 Avenue of the Stars, Suite 311, Los Angeles, CA 90067, and filed with the Clerk  
6 of the United States District Court for the Northern District of California. Any Member of the  
7 Class who does not make his, her or its objection in the manner provided shall be deemed to  
8 have waived such objection and shall forever be foreclosed from making any objection to the  
9 award of attorneys' fees to counsel for the plaintiffs, unless otherwise ordered by the Court.

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

15 7. Lead Counsel shall have the opportunity to file a reply brief in support of the Fee  
16 Motion, which shall be filed with the Court on or before January 28, 2011.

17 8. As previously ordered, a fairness hearing concerning the amount of attorneys'  
18 fees will be held before this Court on February 18, 2010 at 9:00 a.m. The Court reserves the  
19 right to adjourn the date of the hearing without further notice to the Members of the Class.

20 Dated: 11/22/2010, 2010

21  
22   
23 The Honorable Jeremy Fogel  
24 United States District Court for the Northern  
25 District of California  
26  
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# **Exhibit A**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

In re MERCURY INTERACTIVE CORP.  
SECURITIES LITIGATION

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

This Document Relates To:

ALL ACTIONS

CLASS ACTION

**NOTICE OF FAIRNESS HEARING**

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

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

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

Notice of the \$117,500,00 Settlement of this Litigation and the awarding of legal fees was mailed in mid-2008. The Notice provided that Plaintiffs’ Lead Counsel would apply to the Court for attorneys’ fees in the amount of 25% of the Settlement Fund and reimbursement of out-of-pocket expenses not to exceed \$975,000 to be paid from the Settlement Fund (“Fee Motion”). The Notice also provided that the deadline for objections to the Settlement, the Plan of Allocation or the Fee Motion was September 4, 2008 and that a Fairness Hearing, in which the District Court would decide whether to approve the Settlement, Plan of Allocation and Fee Motion, would be held on September 25, 2008. In response to the Notice, the New York State Teachers’ Retirement System (“NY Teachers”) filed an objection to the request for attorneys’ fees. On September 26, 2008 the District Court approved the Settlement and Fee Motion. NY Teachers appealed the award of attorneys’ fees to the United States Court of Appeals for the Ninth Circuit (“Ninth Circuit”). On August 18, 2010, the Ninth Circuit vacated and remanded the attorneys’ fee award to the District Court for further proceedings because it found the procedure inadequate whereby class members were required to object prior to the date the Fee Motion was filed.

A renewed fee motion has been filed with the District Court by Plaintiffs’ Lead Counsel. Counsel is seeking attorneys’ fees in the amount of 22% of the Settlement Fund (“Renewed Fee Motion”). NY Teachers supports the Renewed Fee Motion and will not object. If the requested

attorneys' fees are approved by the Court, the average cost per allegedly damaged share will be approximately \$0.29. If you are a Member of the Class and wish to object to this Renewed Fee Motion, or comment upon the Ninth Circuit Fee Award to NY Teachers<sup>1</sup>, you must file a written objection with the District Court by January 13, 2011. The objection must contain a statement of the reasons for objection. Any Class Member who timely and validly submits a written objection may appear and be heard at the hearing on February 18, 2011. To object to the Renewed Fee Motion, your objection must be received by the following, or postmarked, on or before January 13, 2011:

CLERK OF THE COURT  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
280 South First Street  
San Jose, CA 95113

Lead Counsel for Plaintiffs:

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

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

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

**SPECIAL NOTICE TO NOMINEES**

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

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

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<sup>1</sup> On October 1, 2010, the Ninth Circuit awarded attorneys' fees of \$171,490.00 to the lawyers who represented NY Teachers in their appeal (the "Ninth Circuit Fee Award"). At the February 18, 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.

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.

DATED: November 18, 2010

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