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17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19 **SAN JOSE DIVISION**

20 In re MERCURY INTERACTIVE) Master File No. 5:05-CV-3395-JF (PVT)
CORPORATION SECURITIES)
21 LITIGATION) CLASS ACTION
)
22) **~~{PROPOSED}~~ DISTRIBUTION ORDER**
) **FOR THE NET SETTLEMENT FUND**
23 _____)
This Document Relates To:) Date: April 22, 2011
24 ALL ACTIONS) Time: 9:00 a.m.
) Place: Courtroom 3
25) Before: Honorable Jeremy Fogel
26)
27)
28 _____)

[PROPOSED] DISTRIBUTION ORDER FOR THE NET SETTLEMENT FUND
5:05-CV-3395-JF (PVT)

1 **WHEREAS:**

2 A. As of October 31, 2007, Lead Plaintiff the Mercury Pension Fund Group
3 (collectively referred to herein as “Lead Plaintiffs”), acting on behalf of themselves and the
4 Class, entered into a Stipulation of Settlement (the “Settlement Agreement”) with the Defendants
5 in this action (the “Litigation”).

6 B. By Final Judgment and Order of Dismissal with Prejudice entered September 25,
7 2008, the Court approved the Settlement of the Litigation in the amount of \$117.5 million (the
8 “Settlement Amount”) and approved the proposed Plan of Allocation for the net settlement
9 proceeds (“Net Settlement Fund”).

10 C. Lead Plaintiffs, by unopposed motion filed on February 23, 2011, and on notice to
11 counsel for the Defendants, moved this Court for an order approving the Court-appointed Claims
12 Administrator’s administrative determinations and directing distribution of the Net Settlement
13 Fund.

14 D. The Court has duly considered Lead Plaintiffs’ unopposed motion, the
15 declarations with annexed exhibits, the memorandum of law submitted in support thereof, and all
16 of the submissions and arguments presented.

17 NOW, THEREFORE, after due deliberation, IT IS ORDERED, ADJUDGED AND
18 DECREED that:

19 1. This Order incorporates by reference the definitions in the Settlement Agreement,
20 and all capitalized terms used herein shall have the same meanings as set forth in the Settlement
21 Agreement.

22 2. The administrative determinations of Rust Consulting, Inc. (“Rust”), the
23 Court-appointed Claims Administrator, to accept the Proof of Claim and Release forms (“Proofs
24 of Claim”), including the late but otherwise eligible Proofs of Claim, as set forth in Exhibits H
25 and I to the Affidavit of Peter M. Craig Regarding (A) Processing of Claim Forms, and (B)
26 Calculation of Authorized Claimants’ Claims (“Craig Affidavit”), are hereby APPROVED.

27 3. Rejected or otherwise ineligible Proofs of Claim, as set forth in Exhibits E, F and
28 G to the Craig Affidavit, are hereby REJECTED.

1 4. Any Proofs of Claim that are received on or after February 1, 2011 are hereby
2 rejected as untimely and shall not be accepted for any reason whatsoever.

3 5. The Effective Date of the Settlement, defined at paragraph 5 of the Stipulation,
4 has occurred pursuant to the terms of the Stipulation and the distribution of the Net Settlement
5 Fund to Authorized Claimants is hereby AUTHORIZED and shall be conducted in accordance
6 with the Plan of Allocation and the procedures established by the Claims Administrator and
7 approved by Lead Counsel, as set forth in paragraphs 23 to 25 of the Craig Affidavit.

8 6. If cost-effective, not less than six (6) months after the distribution, a further
9 distribution of the Net Settlement Fund shall be conducted pursuant to which any remaining
10 funds from undeliverable, un-cashed, or returned checks or tax refunds, *etc.*, after payment to
11 any Authorized Claimants who validly contest their distribution amount and support the amount
12 they request and payment of any taxes, unpaid costs or fees incurred or to be incurred in
13 connection with administering the Net Settlement Fund, shall be distributed to Authorized
14 Claimants who cashed their distribution checks and who would receive at least \$10.00 in such an
15 additional distribution based on their Claim, with additional redistributions thereafter in at least
16 six-month intervals until Rust and Co-Lead Counsel determine that further redistribution is not
17 cost-effective. Any remainder that is not cost-effective to distribute shall be donated to a private,
18 non-sectarian, not-for-profit organization with internal revenue code §501(c)(3) tax deduction
19 status designated by Lead Plaintiffs, but only after obtaining approval from the Court.

20 7. A payment in the amount of \$984,967.42, as set forth in Exhibit J to the Craig
21 Affidavit, from the Settlement Fund for the fees and expenses of the Claims Administrator, Rust,
22 in payment for the balance of its fees and expenses in connection with the administration of the
23 Settlement and its fees and expenses to be incurred in connection with the initial distribution of
24 the Net Settlement Fund is hereby APPROVED.

25 8. Rust is authorized to destroy any paper and electronic copies of the Proofs of
26 Claim and all related paper documentation three (3) years after distribution of the Net Settlement
27 Fund.
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9. The Court retains jurisdiction to consider any further applications concerning the administration of the Settlement, and such other and further relief as this Court deems appropriate.

Dated: April 22, 2011



Honorable Jeremy Fogel
UNITED STATES DISTRICT JUDGE