

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

8	MERCER INTERNATIONAL INC.,
9	Plaintiff,
10	vs.
11	GATES CAPITAL MANAGEMENT, INC.,
12	GATES CAPITAL MANAGEMENT GP,
13	LLC, GATES CAPITAL MANAGEMENT,
14	L.P., GATES CAPITAL PARTNERS, LLC,
15	ECF VALUE FUND, L.P., ECF VALUE
16	FUND II, L.P., ECF VALUE FUND
17	INTERNATIONAL MASTER L.P., ECF
18	VALUE FUND INTERNATIONAL LTD.,
19	and JEFFREY L. GATES,
20	Defendants.

Case No. 2:16-cv-01864-JLR

~~PROPOSED~~ ORDER GRANTING
DEFENDANTS' UNOPPOSED
MOTION TO APPROVE
SETTLEMENT

NOTE ON MOTION CALENDAR:
April 7, 2017

This is a suit brought under Section 16(b) of the Securities Exchange Act of 1934, as amended, 15 U.S.C. § 78p(b), (together, with the rules and regulations promulgated thereunder, "Section 16(b)"), to recover short-swing profits on behalf and for the benefit of Plaintiff Mercer International, Inc. ("Mercer") from Defendants Gates Capital Management, L.P., Gates Capital Management, Inc., Gates Capital Management GP, LLC, Gates Capital Partners, LLC (f/k/a Gates Capital Partners, L.P.), ECF Value Fund, L.P., ECF Value Fund II, L.P., ECF Value Fund

[PROPOSED] ORDER GRANTING
MOTION TO APPROVE SETTLEMENT
Case No. 2:16-cv-01864-JLR

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1 International Master L.P., ECF Value Fund International Ltd., and Jeffrey L. Gates (collectively,
2 the “Gates Defendants”).

3 The Court has considered (1) whether the process leading up to the Stipulation and
4 Agreement of Compromise, Settlement and Release, dated March 3, 2017 (the “Settlement
5 Agreement”) constitutes a “diligent prosecution” of this matter by Mercer pursuant to Section
6 16(b); (2) whether judgment should be entered dismissing this action with prejudice, and (3)
7 whether the Court should enter releases and bar any future prosecution of Section 16(b) claims
8 against the Gates Defendants.

9 Unless otherwise defined herein, all capitalized terms shall have the meanings set forth in
10 the Settlement Agreement, attached as Exhibit A to this Order.

11 This action (the “Action”) was brought by Mercer to recover alleged “short-swing
12 profits” under Section 16(b). The Court, having considered all matters submitted to it during the
13 course of these proceedings and after a review of the record herein, the Settlement Agreement
14 and other papers submitted to the Court:

15 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED

16 THAT:

17 1. The Court has jurisdiction over the subject matter of this action, Mercer, and the
18 Gates Defendants.

19 2. The Court finds that Mercer has diligently prosecuted the claims set forth in the
20 Amended Complaint within the meaning of Section 16(b).

21 3. The parties are directed to consummate the settlement in accordance with the
22 terms and provisions of the Settlement Agreement.

1 4. This Order Granting the Unopposed Motion to Approve Settlement and the
2 accompanying Final Judgment (“Order and Final Judgment”) shall not constitute evidence or an
3 admission by the Gates Defendants or any other person that any transaction giving rise to
4 liability or damages under Section 16(b) occurred, or that any violation of law or act of other
5 wrongdoing has been committed, and shall not be deemed to create any inference that there is or
6 was liability of any person therefor. The Gates Defendants do not admit, either expressly or
7 implicitly, that they or any one of them is subject to any liability whatsoever by reason of any of
8 the matters alleged in the Amended Complaint or referenced in the Settlement Agreement, or
9 that there is any merit to any of the claims for damages sought therein. The Gates Defendants, to
10 the contrary, expressly deny and dispute the existence of any such liability or damages.

11 5. The Amended Complaint is hereby dismissed on the merits, with prejudice and
12 without costs.

13 6. The Gates Defendants and the other Releasees are hereby discharged and released
14 from any and all liability and damages under or based upon any and all claims, rights, causes of
15 action, suits, matters, demands, transactions and issues, known or unknown, arising out of or
16 relating to the assertions contained in the Amended Complaint or that could have been asserted
17 against the Gates Defendants and the other Releasees (i) by Mercer and/or (ii) by any and all
18 owners of any security (as defined in Section 3(a)(10) of the Exchange Act) of Mercer or of any
19 other security or instrument, the value of which is derived from the value of any Mercer equity
20 security, or any of them, whether individually, directly, representatively, derivatively, as a
21 member of a group, or in any other capacity for all Claims arising out of or relating to any
22 violation of Section 16(b) based on trading in Mercer securities, equity swaps and/or other
23 securities or instruments the value of which is derived from the value of any Mercer equity

1 security from May 9, 2014 through January 31, 2017, in each case only to the extent such trades
2 have been disclosed to Mercer by the Gates Defendants prior to the date of the Settlement
3 Agreement.


4 7. Mercer and all owners of any security (as defined in Section 3(a)(10) of the
5 Exchange Act) of Mercer or of any other security or instrument, the value of which is derived
6 from the value of any Mercer equity security or any of them, either individually, directly,
7 derivatively, representatively or in any other capacity, are permanently barred and enjoined from
8 instituting or prosecuting this or any other action, in this or any other court or tribunal of this or
9 any other jurisdiction, and any and all claims, rights, causes of action, suits, matters, demands,
10 transactions and issues, known or unknown, arising out of or relating to the assertions contained
11 in the Amended Complaint in this action or that could have been asserted against the Gates
12 Defendants and the other Releasees (i) by Mercer and/or (ii) by any and all owners of any
13 security (as defined in Section 3(a)(10) of the Exchange Act) of Mercer or of any other security
14 or instrument, the value of which is derived from the value of any Mercer equity security, or any
15 of them, whether individually, directly, representatively, derivatively, as a member of a group or
16 in any other capacity, for all Claims arising out of or relating to any violation of Section 16(b)
17 based on trading in Mercer securities, equity swaps and/or other securities or instruments the
18 value of which is derived from the value of any Mercer equity security from May 9, 2014
19 through January 31, 2017, in each case only to the extent such trades have been disclosed to
20 Mercer by the Gates Defendants prior to the date of the Settlement Agreement.

21 8. Jurisdiction is hereby reserved over all matters relating to the enforcement,
22 administration and performance of the Settlement Agreement and this Order.

23 9. All relief not expressly granted herein is DENIED.

1 10. The Clerk of the Court is instructed to close this case upon entry of this Order and
2 the accompanying Final Judgment.
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1 SIGNED THIS 23RD DAY OF April, 2017.

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3 
4 HONORABLE JAMES L. ROBART
UNITED STATES DISTRICT JUDGE

5 PRESENTED BY:

6 **BRACEWELL LLP**

7 By: /s/Philip J. Bezanson

8 By: /s/Carolyn Robbs Bilanko

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20 *Attorneys for Defendants*

CERTIFICATE OF SERVICE

I declare that on March 20, 2017, I caused a true copy of the foregoing document to be served on the following in the manner indicated:

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- ECF
- Via Hand Delivery
- Via Facsimile
- Via U.S. Mail
- Via Overnight Delivery
- Via E-Mail per Agreement

*Attorney for Plaintiff
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/s/Victoria Washington
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Assistant to Carolyn Robbs Bilanko