

1 prices below the then-market value of Mercury stock would incur a compensation expense for
 2 Mercury.

3 44. Smith, who was not trained as a CPA, also demonstrated his understanding of the
 4 accounting for stock options in a late 2002 communication to an employee who wanted options
 5 priced as of a prior day. Smith explained to the employee (and to Landan, Skaer and others) that the
 6 price of an option must be “determined when the Comp Committee of the Board of Directors
 7 approves the grant” and that “deliver[ing] in the money options would . . . Create a Comp Charge.”
 8

9 45. Despite their awareness of how options were supposed to be priced under the
 10 shareholder-approved plans, the Landan, Abrams, Smith and Skaer consistently caused Mercury to
 11 backdate options in violation of those pricing requirements. Between 1997 and April 2002, the
 12 company, either through the Board, its Compensation Committee, or the Stock Option Committee,
 13 made a total of 45 grants of options to executives and employees. *Every* single one of those grants
 14 was backdated to a date corresponding to a relative low point of the company’s stock, as set forth in
 15 the chart below:
 16

17 **Mercury Option Grants (Dated November 1996 - March 2002)**

18

19 Claimed					Price on		
20 Grant Date	Actual Grant Date	Committee	Memorializing	Exercise	Actual Grant	Difference in	Total
			Document	Price	Date	Share Price	Shares³
21 11/29/1996	2/4/1997	BOD	UWC	\$2.50	\$3.31	\$0.81	1,795,000
22 3/31/1997	6/9/1997	CC	UWC	\$2.44	\$3.97	\$1.53	1,260,000
23 3/31/1997	6/9/1997	BOD	UWC	\$2.44	\$3.97	\$1.53	1,683,000
24 7/23/1997	10/29/1997	BOD	UWC	\$3.81	\$5.28	\$1.47	888,000
25 10/27/1997	10/29/1997	BOD	UWC	\$4.88	\$5.28	\$0.40	448,000
26 1/9/1998	5/6/1998	BOD	UWC	\$6.31	\$10.09	\$3.78	1,920,225
27 1/9/1998	3/9/1998	CC	UWC	\$6.31	\$8.75	\$2.44	960,000
28 3/24/1998	5/6/1998	BOD	UWC	\$8.48	\$10.09	\$1.61	445,000
6/1/1998	7/21/1998	BOD	UWC	\$8.09	\$10.69	\$2.60	292,000
10/5/1998	12/9/1998	SOC	UWC	\$6.03	\$13.25	\$7.22	1,550,800
1/21/1999	3/9/1999	CC	UWC	\$12.03	\$17.50	\$5.47	1,180,000

3 The share totals are adjusted to account for 2-for-1 stock splits that occurred in 1999 and 2000.

Mercury Option Grants (Dated November 1996 - March 2002)

Claimed Grant Date	Actual Grant Date	Committee	Memorializing Document	Exercise Price	Price on Actual Grant Date	Difference in Share Price	Total Shares ³
1/21/1999	5/3/1999	SOC	UWC	\$12.03	\$14.81	\$2.78	1,906,800
4/20/1999	8/2/1999	SOC	UWC	\$11.81	\$21.72	\$9.91	299,000
7/15/1999	11/9/1999	CC	Minutes	\$18.25	\$48.28	\$30.03	198,000
7/15/1999	10/5/1999	SOC	N/A	\$18.25	\$34.58	\$16.33	666,500
8/10/1999	10/5/1999	SOC	N/A	\$21.44	\$34.58	\$13.14	58,000
9/30/1999	10/5/1999	SOC	UWC	\$32.28	\$34.58	\$2.30	82,000
10/27/1999	12/20/1999	SOC	UWC	\$36.50	\$51.13	\$14.63	209,500
12/1/1999	12/21/1999	SOC	UWC	\$41.34	\$54.69	\$13.35	184,358
12/9/1999	1/3/2000	SOC	UWC	\$45.47	\$50.98	\$5.51	72,500
1/6/2000	1/19/2000	CC	Minutes	\$40.72	\$57.47	\$16.75	1,200,000
1/6/2000	1/21/2000	SOC	UWC	\$40.72	\$63.66	\$22.94	2,493,800
1/14/2000	3/16/2000	SOC	UWC	\$47.31	\$104.44	\$57.13	116,200
2/1/2000	4/11/2000	SOC	N/A	\$58.19	\$72.88	\$14.69	25,000
4/14/2000	6/7/2000	SOC	UWC	\$58.75	\$85.12	\$26.37	339,850
5/23/2000	5/16/2000 ⁴	CC	Minutes	\$65.20	\$84.50	\$19.30	175,000
5/23/2000	7/25/2000	CC	Minutes	\$65.20	\$94.69	\$29.49	450,000
5/23/2000	7/25/2000	SOC	UWC	\$65.20	\$94.69	\$29.49	264,450
6/27/2000	7/25/2000	SOC	UWC	\$89.00	\$94.69	\$5.69	124,500
7/28/2000	9/27/2000	SOC	UWC	\$85.12	\$146.00	\$60.88	107,550
8/23/2000	9/27/2000	SOC	UWC	\$103.44	\$146.00	\$42.56	229,750
9/12/2000	10/24/2000	SOC	UWC	\$112.39	\$127.06	\$14.67	66,500
9/18/2000	10/24/2000	SOC	UWC	\$125.44	\$127.06	\$1.62	32,000
11/29/2000	12/21/2000	BOD	UWC	\$63.06	\$80.56	\$17.50	390,000
11/29/2000	1/17/2001	SOC	UWC	\$63.06	\$80.94	\$17.88	2,298,950
1/8/2001	2/8/2001	CC	UWC	\$60.88	\$75.31	\$14.43	1,988,000
4/4/2001	7/6/2001	CC/BOD	UWC/Minutes	\$31.88	\$48.69	\$16.81	92,500
4/4/2001	7/20/2001	SOC	N/A	\$31.88	\$36.63	\$4.75	2,092,772
10/1/2001	11/6/2001	CC	UWC	\$18.74	\$28.05	\$9.31	100,000
10/1/2001	10/29/2001	SOC	N/A	\$18.74	\$25.16	\$6.42	580,600
10/1/2001	2/12/2002	CC	N/A	\$18.74	\$36.43	\$17.69	60,000
11/2/2001 ⁵	11/6/2001/2/12/02	CC	UWC	\$24.29	\$28.05/\$36.43	\$3.76/\$12.14	625,000
1/22/2002	2/12/2002	CC	UWC	\$29.29	\$36.43	\$7.14	1,890,000
1/22/2002	1/30/2002	SOC	UWC	\$29.29	\$38.66	\$9.37	2,427,454
3/20/2002	4/1/2002	SOC	UWC	\$36.35	\$39.40	\$3.05	300,000

⁴ With respect to a small number of grants, the grant was actually approved at a board meeting prior to the represented date of grant.

1 documentation indicated that the loans were required to bear a market rate of interest. This change,
2 made by Skaer and others in late August or early September of 2001, was done to cause the loan
3 arrangements to appear to be fully recourse, and in compliance with FIN 44.

4 139. In December of 2001, after the documentation associated with stock option exercise
5 loans were sent to European employees, management in Europe communicated to Skaer and others
6 that employees “were told that there is 0% interest on this loan and the[y] are surprised to see that
7 they must pay interest.”

8
9 140. Skaer directed the response to this concern, explaining that, “I believe our plan was to
10 bonus them the interest when they paid it – if you recall – without the interest – they aren’t real loans
11 and don’t achieve our objectives.”

12 141. The European managers were told that “[d]ue to recent accounting pronouncements
13 (FIN 44) we are not able to give loans for stock options without interest rates that are close to what
14 financial institutions would lend to those individuals. If we did, the loans would cause variable
15 accounting.” The European manager’s response was, “I guess the main issue here is that the
16 employee has to trust us as we cannot have an agreement to this effect or we have variable
17 accounting.”

18
19 142. In practice, during 2003 and 2004 when the terms of many of the loans required
20 repayment, for every employee that sold stock to pay for the loan, the company issued a “bonus” to
21 the employee in the amount necessary to “gross up” the amount of interest due. Where options were
22 under-water and employees failed to pay the principal amount, the shares that had been exercised
23 were simply recaptured by the company and outstanding principal and interest amounts due were
24 written off. The company, as a matter of practice, never had any intention of collecting the full value
25 of the loan.
26

27
28 greater volatility in reported income and expenses. Variable accounting is generally triggered in connection with stock

1 143. Indeed, until approximately February of 2003, the purported interest being charged
2 was not even being accrued on the books and records of the company. Despite the fact that the
3 company in mid 2003 began accruing the interest in its records, it maintained a consistent practice of
4 “grossing up” the interest and not enforcing the obligations of the loans, consistent with the original
5 intentions of Skaer and Abrams.

6 144. As a result of fraudulently structuring the loan transactions to appear to be recourse
7 obligations, Abrams, Skaer and others caused Mercury to fail to use variable accounting to account
8 for these options between 1999 and 2005, thereby causing the company to fail to disclose a
9 compensation expense of approximately \$24 million that should have been reported on the
10 company’s financial statements during that period.
11

12
13 **FIRST CLAIM FOR RELIEF**

14 *Violations of Section 17(a) of the Securities Act by All Defendants*

15 145. The Commission realleges and incorporates by reference Paragraphs 1 through 144,
16 above.

17 146. By engaging in the conduct described above, Mercury, Landan, Smith, Abrams and
18 Skaer, directly or indirectly, in the offer or sale of securities, by the use of the means or instruments
19 of transportation or communication in interstate commerce or by use of the mails:

- 20 (a) with scienter, employed devices, schemes or artifices to defraud;
21 (b) obtained money or property by means of untrue statements of a material fact or
22 omissions to state a material fact necessary in order to make the statements
23 made, in the light of the circumstances under which they were made, not
24 misleading; and
25 (c) engaged in transactions, practices, or courses of business which operated or
26 would operate as a fraud or deceit upon purchasers of securities.
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options where the amount the option holder will actually pay for the option is subject to some uncertainty or ambiguity.

