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10 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
11 OF THE STATE OF CALIFORNIA
12

13 In the Matter of:) SETTLEMENT AGREEMENT
14)
15 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,)
16)
Complainant,)
17 v.)
18 MERCURY TECHNOLOGIES, INC.,)
19 Respondent.)
20)
21)
22)

23
24 I.
25 **RECITALS**

26 A. The Commissioner of Financial Protection and Innovation (“Commissioner”) agrees to enter
27 into this Settlement Agreement (hereinafter referred to as the “Agreement”) with Mercury
28 Technologies, Inc. (“Mercury”). Together, the Commissioner and Mercury will be referred to as the
“Parties”.

1 B. Mercury is a financial technology company that partners with certain banks (hereinafter,
2 “Bank Partner(s)”) to assist consumers, small businesses, and startups with obtaining access to bank
3 products and services to enable them to grow and prosper. Mercury is incorporated in Delaware and
4 is doing business in California with headquarters in San Francisco, California.

5 C. At all relevant times herein, Mercury was not licensed to operate as a bank in California or
6 in any other jurisdiction, nor was it exempt from such licensure.

7 D. The Commissioner issues licenses and regulates state-chartered banks (Cal. Fin. Code §§
8 300, 560) in the state of California through the Department of Financial Protection and Innovation.
9 Any person engaged in the business of banking in California must be licensed by the Commissioner
10 unless exempt from licensure, or an agent of a person licensed. (Cal. Fin. Code § 563). Furthermore,
11 Cal. Fin. Code § 561 prohibits any person from transacting “business in a way or manner as to lead
12 the public to believe that its business is that of a bank” without actual authority to engage in such
13 business. Cal. Fin. Code § 562 prohibits any person who has not received a certificate from the
14 Commissioner from acting or advertising “in any manner that indicates that the business is the
15 business of a bank...”

16 E. In 2021, the Commissioner commenced an inquiry of Mercury for potential violations of
17 Cal. Fin. Code §§ 561, 562 and 563 concerning Mercury’s use of the term “bank,” or “banking” in
18 its advertising and the use of the FDIC logo on its website.

19 F. As a result of the inquiry, the Commissioner finds:

- 20 1. That Mercury use of the twitter handle @bankmercury was in violation of Cal. Fin.
21 Code §§ 561 and 562.
- 22 2. That Mercury’s use to the phrases “building a bank for startups” and “Mercury makes
23 bank accounts” on its website are confusing to the consumer and in violation of Cal.
24 Fin. Code §§ 561 and 562 in California.
- 25 3. That Mercury’s use of the FDIC logo also violated Cal. Fin. Code §§ 561 and 562
26 and 12 U.S.C § 1828(a)(4) in California.

27 G. Mercury has cooperated with the Commissioner’s inquiry and represents that it is committed
28 to working with regulatory agencies for the benefit of consumers; and that this Agreement reflects

1 Mercury’s willingness to work with regulatory agencies to ensure that its products are transparently
2 disclosed to consumers.

3 H. While neither admitting nor denying the Commissioner’s findings, Mercury agrees to
4 comply to this Agreement as outlined below under “II. TERMS AND CONDITIONS”.

5 **II.**

6 **TERMS AND CONDITIONS**

7
8 1. Purpose. This Agreement resolves the issues before the Commissioner in a manner
9 that avoids the business disruption and expense of a hearing and other possible court proceedings,
10 protects consumers, is in the public interest, and is consistent with the purposes, policies, and
11 provisions of the applicable law.

12 2. Order to Cease and Desist. The Commissioner hereby orders Mercury and Mercury
13 agrees that in accordance with Cal. Fin. Code §§ 561, 562 and 563 in California, that Mercury will
14 cease and desist from 1) using the word bank or banking in its name or twitter handle and 2) using
15 the FDIC logo on its webpage and advertising in a manner likely to mislead. Mercury agrees that
16 the Order to Cease and Desist is hereby deemed a final order.

17 3. Mercury’s Review of its Webpage and Advertising. Mercury agrees to perform and
18 has already performed a review of its webpage and advertising and will make the following
19 changes or enhancements:

20 a. Mercury shall avoid representing that it operates as a bank or itself provides banking
21 products. on its website, on its mobile app, and in advertising to address the
22 following:

23 i. Where “banking” terminology is used, Mercury shall place a disclosure
24 stating that Mercury is not a bank and banking services are provided by its
25 Bank Partner(s). The disclosure shall be in bold and/or increased font size in
26 a clear and conspicuous manner proximate to the use of the banking
27 terminology.

28 ii. Mercury shall enhance internal review and approval process for when it
presents testimonials that may be perceived as representing Mercury as a
bank.

iii. Mercury shall clarify or annotate in all testimonials it publishes, or causes to
be published, that use “banking” terminology that Mercury is a financial

1 technology company, not a bank, and banking services are provided by
2 Mercury’s Bank Partner(s). Further, Mercury shall monitor affiliates and
3 agents who publish other testimonials and provide clarifying information
4 that Mercury is not a bank in response to such testimonials that use
5 “banking” terminology.

6 b. Mercury will remove the phrase “Banking built for startups” and “Mercury builds
7 bank accounts” or similar phrases from its website and advertising.

8 c. Unless agreed to by the Federal Deposit Insurance Corporation, Mercury will cease
9 using the FDIC logo on its webpage and advertising. However, nothing in this
10 provision precludes Mercury from accurately portraying the FDIC insured status of
11 any of its Bank Partners.

12 4. Waiver of Hearing Rights. Mercury hereby waives its right to any hearings, and to
13 any reconsideration, appeal, or other right to review which may be afforded pursuant to the
14 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
15 provision of law or any other rights to hearing, reconsideration, appeal, or other action in this
16 matter. By waiving such rights, Mercury effectively consents to the Agreement becoming final
17 and unappealable. Nothing in this Agreement shall waive Mercury’s right to defend itself in the
18 event of a dispute about compliance with its terms.

19 5. Full and Final Settlement. Mercury hereby acknowledges and agrees that the
20 Agreement is intended to constitute a full, final, and complete resolution of Mercury’s alleged
21 violations as set forth in the Recitals (Violations), and that no further proceedings or actions will be
22 brought by the Commissioner against Mercury based on the alleged Violations, excepting any
23 proceeding to enforce compliance with the terms of this Agreement or if such proceeding is based
24 upon discovery of new and further violations of the law or regulation that do not form the basis for
25 the Agreement and which Mercury knowingly concealed from the State.

26 6. Information Willfully Withheld. This Agreement may be revoked if the
27 Commissioner later finds out that Mercury knowingly or willfully withheld information used and
28 relied upon in the Agreement.

7. Assisting Other Agencies. The Parties further acknowledge and agree that nothing in
the Agreement shall limit the Commissioner’s ability to assist any other agency (city, county, state,
or federal) with any prosecution, administrative, civil, or criminal, brought by any such agency

1 against Mercury or any other person based upon any of the activities alleged in this matter or
2 otherwise.

3 8. Headings. The headings to the paragraphs of this Agreement are inserted for
4 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
5 the provisions hereof.

6 9. Binding. The Agreement is binding on all heirs, assigns, or successors in interest.

7 10. Reliance. Each of the Parties represents, warrants, and agrees that in executing this
8 Agreement, he/she/it has relied solely on the statements set forth herein and the advice of their own
9 counsel. Each of the Parties further represents, warrants, and agrees that in executing this Agreement
10 it has placed no reliance on any statement, representation, or promise of any other party, or any other
11 person or entity not expressly set forth herein, or upon the failure of any party or any other person or
12 entity to make any statement, representation, or disclosure of anything whatsoever. The Parties have
13 included this clause: (1) to preclude any claim that any party was in any way fraudulently induced to
14 execute this Agreement; and (2) to preclude the introduction of parol evidence to vary, interpret,
15 supplement, or contradict the terms of this Agreement.

16 11. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
17 this Agreement will be valid or binding unless it is in writing and signed by each of the Parties. The
18 waiver of any provision of this Agreement will not be deemed a waiver of any other provision. No
19 waiver by each of the Parties of any breach of, or of compliance with, any condition or provision of
20 this Agreement by another party will be considered a waiver of any other condition or provision or
21 of the same condition or provision at another time.

22 12. Full Integration. This Agreement is the final written expression and the complete and
23 exclusive statement of all the agreements, conditions, promises, representations, and covenant
24 among the Parties with respect to the subject matter hereof, and supersedes all prior or
25 contemporaneous agreements, negotiations, representations, understandings, and discussions
26 between and among the Parties, their respective representatives, and any other person or entity, with
27 respect to the subject matter covered hereby.
28

1 13. Governing Law. This Agreement will be governed by and construed in accordance
2 with California law. Each of the parties hereto consents to the jurisdiction of such court, and hereby
3 irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to
4 the maintenance of such action or proceeding in such court.

5 14. Counterparts. This Agreement may be executed in one or more separate counterparts,
6 each of which when so executed, shall be deemed an original. Such counterparts shall together
7 constitute a single document.

8 15. Effect Upon Future Proceedings. If Mercury applies for any license, permit or
9 qualification under the Commissioner’s current or future jurisdiction, or is the subject of any future
10 action by such agency to enforce this Agreement, then the subject matter hereof shall be admissible
11 for the purpose of such application(s) or enforcement proceedings(s).

12 17. Voluntary Agreement. Mercury enters into the Agreement voluntarily and without
13 coercion and acknowledges that no promises, threats, or assurances have been made by the State, or
14 any officer or agent thereof, about the Agreement other than as reflected herein.

15 18. Notice. Any notices required under the Agreement shall be provided to
16 each party at the following addresses:

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18 If to Mercury to: Josh Garcia, Esq.
19 Ketsal
20 155 Water Street
21 Brooklyn, New York 11201
22 josh@ketsal.com

23 If to Commissioner to: Paul Yee, Senior Counsel
24 Department of Financial Protection and Innovation
25 One Sansome Street, Suite 600
26 San Francisco, California 94104-4448
27 (415) 972-8544
28 Paul.Yee@dfpi.ca.gov

19. Signatures. An electronic signature, or a faxed, photocopied, or scanned copy of an
original signature, shall be deemed the same as an original signature.

20. Public Record. Mercury acknowledges that this Agreement shall be a matter of public

1 record.

2 21. Effective Date. The Agreement shall become final and effective ninety days (90) days
3 following execution by all Parties and delivered by the Commissioner or his assigns to Mercury or
4 its counsel of record via e-mail at: josh@kestal.com.

5 22. Authority to Sign. Each signatory hereto covenants that he/she possesses all necessary
6 capacity and authority to sign and enter into this Agreement and undertake the obligations set forth
7 herein.
8

9 IN WITNESS WHEREOF, the Parties hereto have approved and executed the Agreement on
10 the dates set forth opposite their respective signatures.

11 Dated: January 3, 2022

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

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By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

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Dated: December 24, 2021

Mercury Technologies, Inc.

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By _____
Immad Akhund
CEO

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