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NORTHERN DISTRICT OF CALIFORNIA

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1 MARC J. FAGEL (Cal. Bar No. 154425)
MICHAEL S. DICKE (Cal. Bar No. 158187)
2 JINA L. CHOI (Admitted in New York)
choij@sec.gov
3 JENNIFER J. LEE (Cal Bar No. 261399)
leejen@sec.gov
4

Attorneys for Plaintiff
5 SECURITIES AND EXCHANGE COMMISSION
44 Montgomery Street, 26th Floor
6 San Francisco, California 94104
Telephone: (415) 705-2500
7 Facsimile: (415) 705-2501

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

CV 12 1743

11 SECURITIES AND EXCHANGE COMMISSION,
12 Plaintiff,
13 v.
14 BENEDICT VAN, HEREUARE, INC., and
15 ECITY, INC.
Defendants.

Case No.
COMPLAINT

HRL

16 Plaintiff Securities and Exchange Commission (the "Commission") alleges:

17 **SUMMARY OF THE ACTION**

18 1. Defendant Benedict Van raised over \$7 million for his two Silicon Valley Internet
19 start-ups by promising investors that the companies were on the verge of undergoing successful
20 IPO's and were well on their way to becoming the next Google. In reality, neither company had
21 any significant business or any realistic prospect of going public, and the investors' funds were
22 ultimately lost.

23 2. Van is the founder of hereUare, Inc. (a search engine development company) and
24 eCity, Inc. (a company purportedly developing online virtual cities). Van raised funds for the
25 companies from more than 100 largely inexperienced investors in California and Illinois. During
26 investor presentations made in 2007 and 2008, Van made serial misrepresentations about the
27 companies' prospects, claiming, among other things, that: (i) both companies would soon

28 Complaint
SEC v. Van et al.
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Securities and Exchange Commission
44 Montgomery Street, 26th Floor
San Francisco, CA 94104
Telephone: (415) 705-2500

1 conduct IPOs (e.g., “within six months to a year”) with skyrocketing stock prices; (ii) the
2 companies had lucrative patents and contracts that would generate millions in revenue; and (iii)
3 Van, as a wealthy venture capitalist who had previously conducted IPOs, had the requisite
4 experience and contacts to take the companies public. None of these claims was true.

5 3. In reality, hereUare and eCity were years from even considering a public offering
6 and had taken only the most rudimentary steps toward generating revenue in 2007 and/or 2008.
7 The companies had no revenue-generating contracts, were still developing and testing their
8 products, and relied solely on sales of their stock to fund business operations. Moreover, despite
9 Van’s claims of IPO experience and great wealth, he in fact had no such credentials or financial
10 resources.

11 4. hereUare alone raised over \$6.2 million through private placements of its stock to
12 more than 100 investors in California and Illinois. None of these sales of hereUare stock were
13 properly registered with the Commission. eCity raised over \$800,000 from investors through
14 private placements of its stock to approximately 20 investors in California, Illinois, and Missouri.

15 5. The Commission brings this action to enjoin Van, hereUare, and eCity from
16 further violations of the antifraud provisions of the federal securities laws, and to enjoin Van and
17 hereUare from further violations of the registration provisions of the federal securities laws. The
18 Commission also seeks disgorgement and prejudgment interest, civil monetary penalties, and an
19 officer and director bar against Van.

20 JURISDICTION AND VENUE

21 6. The Commission brings this action pursuant to Section 20(b) and (d) of the
22 Securities Act of 1933 (“Securities Act”) [15 U.S.C. §77t(b)] and Sections 21(d) and 21(e) of the
23 Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§78u(d) and 78u(e)].

24 7. This Court has jurisdiction over this action pursuant to Section 22(a) of the
25 Securities Act [15 U.S.C. §78v(a)] and Sections 21(d) and 27 of the Exchange Act [15 U.S.C. §§
26 78u(d), and 78aa]. Defendants, directly or indirectly, have made use of the means and
27

1 instrumentalities of interstate commerce or of mails in connection with the acts, transactions,
2 practices, and courses of business alleged in this complaint.

3 8. Venue is proper in this District pursuant to Section 22(a) of the Securities Act [15
4 U.S.C. § 77v] and Section 27 of the Exchange Act [15 U.S.C. §78aa]. Defendants all reside
5 and/or transact business in the Northern District of California.

6 9. This action has been filed in the San Jose Division according to Civil Local Rule
7 3-120(d) because a substantial portion of the events that give rise to the claims occurred in Santa
8 Clara County.

9 **DEFENDANTS**

10 10. **Benedict Van**, age 51, resided at an Extended Stay Hotel in San Jose, California
11 as of October 2011 and currently has no known address. At all relevant times, Van founded and
12 controlled both hereUare and eCity. In testimony before the Commission, Van asserted his Fifth
13 Amendment privilege against self-incrimination in response to questions regarding hereUare and
14 eCity and his investment-raising activities.

15 11. **hereUare, Inc.** is a Delaware corporation based in Santa Clara, California, and
16 later, in Palo Alto, California in 2007 and 2008. hereUare currently has no business operations.
17 Van controlled hereUare at all relevant times.

18 12. **eCity, Inc.** is a Delaware corporation based in Palo Alto, California in 2008.
19 eCity currently has no business operations. Van controlled eCity at all relevant times.

20 **FACTUAL ALLEGATIONS**

21 **A. Through Misrepresentations About hereUare's Progress Toward An IPO And**
22 **Revenue Growth, Van Raised Over \$6.2 Million From Investors**

23 13. In or about 1997, Van founded hereUare under the name "PeopleNet International
24 Corporation" ("PeopleNet") in Santa Clara, California as an Internet company. From at least
25 December 2006, PeopleNet (and later, hereUare) purported to provide Internet
26 telecommunications services, including a search engine, email messaging, and online classifieds.
27 On or about March 26, 2007, PeopleNet changed its official name to "hereUare, Inc."

1 14. From at least January 2007 through December 2008, Van raised in excess of \$6.2
2 million from individual investors through private placements of hereUare stock. In soliciting
3 investments, Van drove three hours from hereUare's offices in Silicon Valley to hold investor
4 presentations approximately every other week before groups of investors (including a couple
5 who resided in Illinois) at people's homes near Sacramento, California and/or Stockton,
6 California. Many of the investors were inexperienced in finance and/or investing.

7 15. To entice investors to purchase shares in hereUare, Van verbally delivered a
8 standard "IPO within months" pitch that falsely portrayed hereUare as being on the verge of
9 becoming a highly successful, publicly traded Internet company. As part of the solicitation, Van
10 orally misrepresented to investors that:

- 11 a. hereUare would "go public or sell" within a short period of time that ranged from
12 specific quarters (e.g., "Q1 or Q2 2008," "Q3 or Q4 2008"), "six months to a
13 year," and/or "after August 2008";
- 14 b. The IPO was "a done deal";
- 15 c. Goldman Sachs would underwrite the offering and was already preparing the
16 necessary filings;
- 17 d. A large established law firm with offices in Silicon Valley would provide legal
18 services in connection with the IPO; and/or
- 19 e. Investors should buy shares quickly at the "discounted" and/or "friends and
20 family" offer of \$9 per share before the stock price increased first to \$18 per share
21 for institutional investors and later, to \$100 per share on the first trading day of
22 hereUare's stock. Van showed investors Google's stock price chart and led them
23 to believe that they would soon reap millions comparable to the IPO returns seen
24 by investors in Google and/or Baidu (a large Chinese search engine company that
25 went public in or about 2005).

26 16. Van's statements regarding hereUare's progress toward an IPO were false and
27 misleading. First, Goldman Sachs never entered into any relationship with hereUare. Second,

1 hereUare retained a law firm solely for services in connection with the private placements of its
2 stock – and not for an IPO. Third, hereUare had no plan to go public in 2007 or 2008 and in fact
3 failed to generate revenue while incurring several hundreds of thousands of dollars in operating
4 costs. In order to stay in business, hereUare relied on investor funds as its sole source of
5 operating income.

6 17. To further convince investors that hereUare’s IPO would be hugely successful,
7 Van falsely claimed that hereUare was immediately poised to realize millions of dollars in
8 revenue from its products, contracts, and patents. Among other things, Van verbally
9 misrepresented to investors that:

- 10 a. hereUare would be “the next Google,” and its search engine was “three times
11 more powerful” than Google’s version;
- 12 b. hereUare had signed a lucrative deal with China Education Research Network
13 (“CERNET”), a large student network sponsored by the Chinese government, that
14 would secure millions of users; and/or
- 15 c. hereUare held valuable Wi-Fi patents that would generate millions of dollars in
16 royalties from large companies such as Starbucks, Cisco, AT&T, and T-Mobile
17 that Van claimed had infringed its patents.

18 18. Van’s statements regarding hereUare’s revenue growth were false and misleading.
19 In 2007 and 2008, hereUare was primarily focused on developing and testing its products for a
20 market launch and had no revenue-generating contracts (whether for its products, patents, or
21 otherwise). Indeed, hereUare never entered into a contract with CERNET; nor did hereUare
22 evaluate its patents for potential royalties until 2009 (at which point, Van learned the patents had
23 no value).

24 19. Van also made oral misrepresentations to investors regarding his personal
25 background, falsely claiming that he was a highly successful, wealthy venture capitalist with
26 prior IPO experience. In reality, Van had no such credentials.

1 20. In making misrepresentations while soliciting investments for hereUare, Van
2 acted with scienter. In particular, Van knew, or was reckless in not knowing, that his statements
3 to investors regarding hereUare's progress toward an IPO and revenue growth were false and
4 misleading. Van controlled hereUare at all relevant times and had full visibility into its finances,
5 business development opportunities, and operations. Van also knew, or was reckless in not
6 knowing, that his statements to investors regarding his background were false and misleading.

7 **B. Through Substantially Similar Misrepresentations About eCity's Prospects For An**
8 **IPO And Revenue, Van Raised Approximately \$880,000**

9 21. In or about March 2008, Van founded eCity, Inc. ("eCity") as an Internet
10 company. While still a nascent concept, eCity purported to provide online shopping worlds that
11 represented virtual versions of real cities (e.g., San Francisco and New York). In these virtual
12 cities, eCity users would be able to click on representations of stores in their actual locations and
13 thereafter be directed to the stores' retail websites.

14 22. From at least June 2008 through November 2008, Van raised approximately
15 \$880,000 from investors (including one individual who resided in Illinois, and another who
16 resided in Missouri) through private placements of eCity stock. As he did with hereUare
17 investor presentations, Van drove from eCity's offices (which were shared with hereUare) to
18 people's homes in Sacramento and Stockton to hold eCity presentations. Many of the investors
19 had already invested in hereUare.

20 23. During presentations, Van verbally delivered a substantially similar "IPO within
21 months" pitch regarding eCity to potential investors. In particular, Van orally misrepresented to
22 investors that eCity would be conducting an IPO in August 2008, that eCity's IPO would be
23 "bigger" than hereUare's IPO, and that he had the requisite experience and wealth to take eCity
24 public. Van also falsely told investors that eCity's products would be launching within a few
25 months and that large companies such as Anheuser Busch had already signed contracts with
26 eCity.

1 24. Van's statements regarding eCity's progress toward an IPO and/or revenue
2 growth were false and misleading. Indeed, eCity had no plan to conduct an IPO or launch its
3 products in 2008, and otherwise had no revenue-generating contracts (with Anheuser Busch or
4 otherwise).

5 25. Van knew, or was reckless in not knowing, that his statements to investors
6 regarding eCity's progress toward an IPO and/or revenue growth were false and misleading.
7 Van controlled eCity at all relevant times and had full visibility into its finances, business
8 development opportunities, and operations.

9 **C. After The Purported "IPO Dates" For hereUare And eCity Passed, Van Continued**
10 **To Mislead And Misdirect Investors**

11 26. By the end of 2008 and/or early 2009, Van exhausted all of the investor funds he
12 raised (i.e., more than \$7 million) on operating expenses for hereUare and/or eCity, including
13 payroll and rent. At this point in time, the purported IPO dates had passed for both hereUare and
14 eCity, but the companies had not gone public, failed to capitalize on any business prospects for
15 revenue, and ultimately shut down business operations.

16 27. Upon receiving several investor inquiries regarding the status of hereUare and/or
17 eCity, Van continued to mislead and misdirect investors with baseless explanations for why the
18 companies had not gone public. On certain occasions, Van orally told investors that large
19 companies such as Microsoft, Cisco, and/or Ask.com were willing to purchase hereUare. On
20 other occasions, Van verbally misrepresented to investors that former employees had
21 misappropriated millions of dollars from hereUare, and, in that process, irreparably delayed the
22 plan for either hereUare and/or eCity to go public.

23 28. Van's purported "explanations" for why the companies had not gone public were
24 false. In the first instance, neither hereUare nor eCity had any plan to conduct an IPO in 2007 or
25 2008. Moreover, there were no negotiations between hereUare and Microsoft, Cisco, and/or
26 Ask.com for a potential acquisition. Nor did former employees at hereUare misappropriate
27 millions of dollars from the company.

1 **D. hereUare Sold In Excess Of \$6.2 Million In Stock In Violation Of Offering**
2 **Registration Requirements**

3 29. In 2007 and 2008, hereUare sold in excess of \$6.2 million in stock to over 100
4 investors in California and Illinois. In soliciting investments, hereUare employed a “word of
5 mouth” approach in inviting potentially hundreds of investors to presentations. hereUare did not
6 have a pre-existing relationship with many of the investors and did not perform any due
7 diligence on the investors.

8 30. Despite hereUare’s lack of due diligence, Van knew, or was reckless in not
9 knowing, that many of hereUare’s investors were unaccredited and/or unsophisticated. Among
10 other things, Van knew that investors pooled together their funds to meet the \$25,000 minimum
11 investment because they lacked money. Van also made comments noting that he wanted to “help
12 lower and middle-class families” by permitting them to invest and that he hoped to be able to
13 hire them as hereUare employees.

14 31. The federal securities laws require issuers to file a registration statement with the
15 Commission for any securities that are offered or sold to the public, unless an exemption from
16 registration applies. The registration statement, which includes information about the securities
17 for sale and the issuer, seeks to ensure that investors receive complete, accurate, and material
18 information before they invest.

19 32. In 2007 and/or 2008, hereUare did not file a registration statement with the
20 Commission, and no exemption from registration applies to its stock sales.

21 **FIRST CLAIM FOR RELIEF**

22 **(Violations of Section 17(a)(2) of the Securities Act**
23 **by All Defendants)**

24 33. The Commission hereby incorporates paragraphs 1 through 32 by reference.

25 34. Van, hereUare, and/or eCity have, by engaging in the conduct set forth above,
26 directly or indirectly, in the offer or sale of securities, by the use of means or instruments of
27 transportation or communication in interstate commerce, or of the mails, obtained money or

1 property by means of untrue statements of material fact or by omitting to state material facts
2 necessary in order to make statements made, in the light of the circumstances under which they
3 were made, not misleading.

4 35. By reason of the foregoing, Van, hereUare, and/or eCity have directly or
5 indirectly violated Section 17(a)(2) of the Securities Act [15 U.S.C. § 77q(a)(2)], and unless
6 enjoined will continue to violate this provision.

7 **SECOND CLAIM FOR RELIEF**

8 **(Violations of Section 10(b) of the Exchange Act and Rule 10b-5(b) Thereunder**
9 **by All Defendants)**

10 36. The Commission hereby incorporates Paragraphs 1 through 32 by reference.

11 37. Van, hereUare, and/or eCity, by engaging in the conduct set forth above, directly
12 or indirectly, by use of means or instrumentalities of interstate commerce, or of the mails, or of a
13 facility of a national security exchange, with scienter, made untrue statements of material fact or
14 omitted to state material facts necessary in order to make the statements made, in light of the
15 circumstances under which they were made, not misleading.

16 48. By reason of the foregoing, Van, hereUare, and eCity have directly or indirectly
17 violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(b) [17 C.F.R.
18 §§ 240.10b-5(b)] thereunder and unless restrained and enjoined will continue to violate these
19 provisions.

20 **THIRD CLAIM FOR RELIEF**

21 **(Violations of Sections 5(a) and 5(c) of the Securities Act**
22 **by Van and hereUare)**

23 49. The Commission hereby incorporates Paragraphs 1 through 32 by reference.

24 50. Van and hereUare have, by engaging in the conduct set forth above, directly or
25 indirectly, through use of the means or instruments of transportation or communication in
26 interstate commerce or of the mails, offered to sell or sold securities or carried or caused such
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1 securities to be carried through the mails or in interstate commerce, for the purpose of sale or
2 delivery after sale.

3 51. No registration statement was filed with the Commission or was in effect with
4 respect to the securities offered by Van and hereUare prior to the offer or sale of these securities.

5 52. By reason of the foregoing, Van and hereUare have directly or indirectly violated
6 Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)], and unless
7 restrained and enjoined will continue to violate these provisions.

8 RELIEF REQUESTED

9 WHEREFORE, the Commission respectfully requests that the Court:

10 I.

11 Permanently enjoin Van, hereUare, and eCity, their agents, servants, employees,
12 attorneys, and all persons in active concert or participation with them who receive actual notice
13 of the injunction by personal service or otherwise, and each of them, from future violations of
14 Section 17(a)(2) of the Securities Act, [15 U.S.C. § 77q(a)], and Section 10(b) the Exchange Act,
15 [15 U.S.C. § 78j(b)] and Rule 10b-5(b) [17 C.F.R. § 240.10b-5] thereunder.

16 II.

17 Permanently enjoin Van, hereUare, their agents, servants, employees, attorneys, and all
18 persons in active concert or participation with them who receive actual notice of the injunction
19 by personal service or otherwise, and each of them, from future violations of Sections 5(a) and
20 5(c) of the Securities Act, [15 U.S.C. §§ 77e(a) and 77e(c)].

21 III.

22 Order Van to pay civil money penalties pursuant to Section 20(d)(1) of the Securities Act
23 [15 U.S.C. § 77t(d)(1)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

24 IV.

25 Order Van to disgorge his ill-gotten gains in an amount according to proof, plus
26 prejudgment interest thereon.

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V.

Permanently enjoin Van from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78I] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

VI.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

VII.

Grant such other and further relief as this Court may deem just, equitable, and necessary.

Dated: April 9, 2012

Respectfully submitted,



MARC J. FAGEL
MICHAEL S. DICKE
JINA L. CHOI
JENNIFER J. LEE

Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION