

BRODSKY & SMITH, LLC

Evan J. Smith (SBN 242352)
esmith@brodskysmith.com
9595 Wilshire Blvd., Ste. 900
Beverly Hills, CA 90212
Tel.: (877) 534-2590
Fax: (310) 247-0160

Attorneys for Plaintiff

[Additional Counsel Listed Below]

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

DOUGLAS BRAGAN, Individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

BROCADE COMMUNICATIONS SYSTEMS,
INC., JUDY BRUNER, LLOYD A. CARNEY,
RENATO A. DIPENTIMA, ALAN L.
EARHART, JOHN W. GERDELMAN, KIM C.
GOODMAN, DAVID L. HOUSE, L. WILLIAM
KRAUSE, DAVID E. ROBERSON, SANJAY
VASWANI, BROADCOM LIMITED,
BROADCOM CORPORATION, and BOBCA 11
MERGER SUB, INC.,

Defendants.

Case No.:

**COMPLAINT FOR VIOLATION OF
THE FEDERAL SECURITIES LAWS**

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff Douglas Bragan (“Plaintiff”), by and through his attorneys, alleges upon personal knowledge as to himself, and upon information and belief based upon, among other things, the investigation of counsel as to all other allegations herein, as follows:

SUMMARY OF THE ACTION

1. This action stems from a proposed transaction announced on November 2, 2016

1 (the “Proposed Transaction”), pursuant to which Brocade Communications Systems, Inc.
2 (“Brocade” or the “Company”) will be acquired by Broadcom Limited (“Broadcom” or “Ultimate
3 Parent”), Broadcom Corporation (“Parent”), and Bobcat Merger Sub, Inc. (“Merger Sub,” and
4 together with Ultimate Parent and Parent, “Broadcom”).

5
6 2. On November 2, 2016, Brocade’s Board of Directors (the “Board” or “Individual
7 Defendants”) caused the Company to enter into an agreement and plan of merger (the “Merger
8 Agreement”). Pursuant to the terms of the Merger Agreement, shareholders of Brocade will receive
9 \$12.75 in cash for each share of Brocade common stock owned.

10 3. On December 6, 2016, defendants filed a Preliminary Proxy Statement with the
11 United States Securities and Exchange Commission (“SEC”) in connection with the Proposed
12 Transaction. And, on December 20, 2016, defendants filed a Definitive Proxy Statement with the
13 United States Securities and Exchange Commission (the “Proxy Statement” or “Proxy”).

14
15 4. The Proxy Statement omits material information with respect to the Proposed
16 Transaction, which renders the Proxy Statement false and misleading. Accordingly, plaintiff
17 alleges herein that defendants violated Sections 14(a) and 20(a) of the Securities Exchange Act of
18 1934 (the “1934 Act”) in connection with the Proxy Statement.

19
20 5. For these reasons and as set forth in detail herein, Plaintiff seeks to enjoin the
21 Proposed Transaction or, in the event the Proposed Transaction is consummated, recover damages
22 resulting from the Individual Defendants’ (as defined herein) violations of their fiduciary duties
23 and from Broadcom.

24 **JURISDICTION AND VENUE**

25 6. Jurisdiction is founded upon federal question jurisdiction, pursuant to §27 of the
26 Exchange Act, as amended, 15 U.S.C. §78aa, and 28 U.S.C. § 1331.

27 7. Venue is proper pursuant to 28 U.S.C. § 1391(b) because Defendants systematically
28

1 conducted business on a regular basis in this District and/or reside in this District and the wrongful
2 conduct complained of herein occurred in this District.

3 **PARTIES**

4 8. Plaintiff is, and at all relevant times was, a continuous stockholder of Brocade.

5 9. Defendant Brocade is a Delaware corporation and maintains its principal executive
6 offices at 130 Holger Way, San Jose, California 95134. Brocade's common stock is traded on the
7 NasdaqGS under the ticker symbol "BRCD."

8 10. Defendant Judy Bruner ("Bruner") has served as a director of Brocade since
9 January 2009. According to the Company's website, Bruner is Chair of the Audit Committee.

10 11. Defendant Lloyd A. Carney ("Carney") has served as a director of Brocade since
11 February 2013 and as Chief Executive Officer ("CEO") since January 2013.

12 12. Defendant Renato A. DiPentima ("DiPentima") has served as a director of Brocade
13 since January 2007. According to the Company's website, DiPentima is a member of the
14 Compensation Committee and the Nominating and Governance Committee.

15 13. Defendant Alan L. Earhart ("Earhart") has served as a director of Brocade since
16 February 2009. According to the Company's website, Earhart is a member of the Audit Committee.

17 14. Defendant John W. Gerdelman ("Gerdelman") has served as a director of Brocade
18 since January 2007. According to the Company's website, Gerdelman is a member of the Audit
19 Committee and the Corporate Development Committee.

20 15. Defendant Kim C. Goodman ("Goodman") has served as a director of Brocade
21 since February 2016.

22 16. Defendant David L. House ("House") has served as a director of Brocade since
23 February 2004 and as Chairman of the Board since December 2005. According to the Company's
24 website, House is a member of the Compensation Committee, the Nominating and Governance
25

1 Committee, and the Corporate Development Committee.

2 17. Defendant L. William Krause (“Krause”) has served as a director of Brocade since
3 2004. According to the Company’s website, Krause is Chair of the Compensation Committee and
4 a member of the Nominating and Governance Committee.

5 18. Defendant David E. Roberson (“Roberson”) has served as a director of Brocade
6 since April 2014. According to the Company’s website, Roberson is Chair of the Corporate
7 Development Committee and a member of the Audit Committee.

8 19. Defendant Sanjay Vaswani (“Vaswani”) has served as a director of Brocade since
9 April 2004. According to the Company’s website, Vaswani is Chair of the Nominating and
10 Governance Committee and a member of the Compensation Committee.

11 20. The defendants identified in paragraphs 10 through 19 are collectively referred to
12 herein as the “Individual Defendants.”

13 21. Defendant Ultimate Parent is a limited liability company organized under the laws
14 of the Republic of Singapore and a party to the Merger Agreement.

15 22. Defendant Parent is a California corporation, an indirect subsidiary of Ultimate
16 Parent, and a party to the Merger Agreement.

17 23. Defendant Merger Sub is a Delaware corporation, a direct wholly-owned subsidiary
18 of Parent, and a party to the Merger Agreement.

19 24. Collectively, Brocade, the Individual Defendants, Ultimate Parent, Parent and
20 Merger Sub are referred to herein as the “Defendants.”

21
22
23 **CLASS ACTION ALLEGATIONS**

24 25. Plaintiff brings this action on his own behalf and as a class action pursuant to Fed.
25 R. Civ. P. 23 on behalf of all holders of Brocade common stock who are being and will be harmed
26 by Defendants’ actions described below (“Class”). Excluded from the Class are Defendants herein
27
28

1 and any person, firm, trust, corporation or other entity related to or affiliated with any of the
2 Defendants.

3 26. This action is properly maintainable as a class action because:

4 a. The Class is so numerous that joinder of all members is impracticable. As
5 of August 26, 2016, there were over 400 million shares of Brocade common stock issued
6 and outstanding. The actual number of public shareholders of Brocade will be ascertained
7 through discovery.

8 b. There are questions of law and fact that are common to the Class, including:

9 i) whether Defendants have misrepresented or omitted material
10 information concerning the Proposed Transaction in the Proxy in
11 violation of the Exchange Act;

12 ii) whether the Individual Defendants have violated Section 20(a) of
13 the Exchange Act; and

14 iii) whether Plaintiff and the other members of the Class would suffer
15 irreparable injury were the Proposed Transaction complained of
16 herein consummated.

17 c. Plaintiff is an adequate representative of the Class, and has retained
18 competent counsel experienced in litigation of this nature and will fairly and adequately
19 protect the interests of the Class.

20 d. Plaintiff's claims are typical of the claims of the other members of the Class
21 and Plaintiff does not have any interests adverse to the Class.

22 e. The prosecution of separate actions by individual members of the Class
23 would create a risk of inconsistent or varying adjudications with respect to individual
24 members of the Class which would establish incompatible standards of conduct for the
25

1 party opposing the Class.

2 f. Defendants have acted on grounds generally applicable to the Class with
3 respect to the matters complained of herein, thereby making appropriate the relief sought
4 herein with respect to the Class as a whole.

5 **SUBSTANTIVE ALLEGATIONS**

6
7 **A. Background**

8 27. Brocade is a leading supplier of networking hardware, software, and services,
9 including Storage Area Networking solutions and Internet Protocol Networking solutions, for
10 businesses and organizations of various types and sizes.

11 28. On November 21, 2016, Brocade issued a press release wherein it reported its
12 financial results for its fourth quarter and full fiscal year ended October 29, 2016. Brocade reported
13 fourth quarter revenue of \$657 million, an increase of 12% year-over-year and 11% quarter-over-
14 quarter. Revenue for fiscal year 2016 was \$2,346 million, up 4% year-over-year. Additionally,
15 non-GAAP diluted earnings per share were \$0.33 for the fourth quarter and \$1.04 for fiscal year
16 2016, up 27% and up 3% year-over-year, respectively.

17
18 29. With respect to the results, Individual Defendant Carney, CEO of the Company,
19 commented:

20 Fiscal 2016 was a year of significant accomplishment[.] We delivered record
21 revenue and expanded our market reach to address critical requirements at the
22 network edge through our acquisition of Ruckus Wireless. In addition, we provided
23 our customers with significant innovations across our product portfolio, including
24 Gen 6 Fibre Channel, data center automation, Ruckus Cloud Wi-Fi, and next
25 generation data center routing. With a range of new IP Networking solutions
26 expected to launch in the first quarter of fiscal 2017, we continue to advance our
27 roadmap and help our customers transform their networks for digital business.

28 30. As set forth in the Proxy Statement, in May 2016, Tom Krause (“T. Krause”), Vice
President of Corporate Development and Acting Chief Financial Officer of Ultimate Parent,
contacted Ted Rado (“Rado”), Vice President of Corporate Development of Brocade, to arrange a

1 meeting. Rado and T. Krause met on May 19 and discussed Ultimate Parent's interest in potentially
2 acquiring Brocade's fibre channel business.

3 31. On June 2, 2016, Individual Defendant Carney met with Hock E. Tan ("Tan"), CEO
4 and President of Ultimate Parent, regarding Ultimate Parent's interest in the Company's fibre
5 channel business.

6 32. Several days later, Tan called Carney and informed him that Ultimate Parent was
7 interested in potentially acquiring the Company as a whole. Tan and Carney met regarding the
8 potential acquisition on July 12.

9 33. On July 14, 2016, Ultimate Parent submitted an indication of interest to acquire
10 Brocade, which apparently did not contain a proposed purchase price.

11 34. On September 8, 2016, Brocade and Ultimate Parent executed a non-disclosure
12 agreement.

13 35. On September 14 and 16, 2016, management of Brocade and Ultimate Parent met
14 regarding the potential transaction.

15 36. On September 16, 2016, Ultimate Parent delivered an indication of interest to
16 acquire the Company for \$12.00 per share in cash.

17 37. On October 3, 2016, Ultimate Parent submitted its "best and final proposal" of
18 \$12.75 per share – the ultimate merger consideration.

19 38. Subsequently, "Sponsor B" and a co-bidder indicated that Sponsor B's co-bidder
20 was potentially interested in acquiring Brocade's wireless businesses, and Sponsor B was
21 interested in the remaining portion of the Company. Nevertheless, the Board determined not to
22 engage in discussions regarding a transaction with Sponsor B, considering, among other things,
23 "that Ultimate Parent had required an expeditious timeframe for the signing of a definitive
24 agreement."
25
26
27
28

1 39. On October 18, 2016, “Sponsor A” submitted an indication of interest to acquire
2 Brocade for \$11.50 to \$12.00 per share.

3 40. The same day, “Sponsor C” submitted an indication of interest to acquire Brocade
4 for \$11.50 to \$12.00 per share.

5 41. On October 19, 2016, Brocade’s representatives informed Sponsors A and C that
6 “the purchase prices included in their respective proposals were insufficient,” and proceeded with
7 discussions with Ultimate Parent.
8

9 42. On November 1, 2016, the Board approved the Proposed Transaction with
10 Broadcom, and the parties executed the Merger Agreement the next day.

11 **B. The Proposed Transaction**

12 43. On November 2, 2016, Broadcom and Brocade issued a press release announcing
13 the Proposed Transaction:
14

15 Broadcom Limited (Nasdaq:AVGO) and Brocade Communications Systems, Inc.
16 (Nasdaq:BRCD) today announced that they have entered into a definitive
17 agreement under which Broadcom will acquire Brocade, a leader in Fibre Channel
18 storage area network (“FC SAN”) switching and IP networking, for \$12.75 per
19 share in an all-cash transaction valued at approximately \$5.5 billion, plus \$0.4
20 billion of net debt. Broadcom expects to fund the transaction with new debt
21 financing and cash available on its balance sheet. Broadcom, with the support of
22 Brocade, plans to divest Brocade’s IP Networking business, consisting of wireless
23 and campus networking, data center switching and routing, and software
24 networking solutions.

25 “This strategic acquisition enhances Broadcom’s position as one of the leading
26 providers of enterprise storage connectivity solutions to OEM customers,” stated
27 Hock Tan, President and Chief Executive Officer of Broadcom. “With deep
28 expertise in mission-critical storage networking, Brocade increases our ability to
address the evolving needs of our OEM customers. In addition, we are confident
that we will find a great home for Brocade’s valuable IP networking business that
will best position that business for its next phase of growth.”

“This transaction represents significant value for our shareholders, who will receive
a 47% premium from the Brocade closing share price on Friday, October 28, 2016,
and creates new opportunities for our customers and partners,” said Lloyd Carney,
Chief Executive Officer of Brocade. “Our best-in-class FC SAN solutions will help
Broadcom create one of the industry’s broadest portfolios for enterprise storage.

1 We will work with Broadcom as it seeks to find a buyer for our IP Networking
2 business which includes a full portfolio of open, hardware and software-based
3 solutions spanning the core of the data center to the network edge.”

4 Upon closing, the transaction is expected to be immediately accretive
5 to Broadcom’s non-GAAP free cash flow and earnings per share. Broadcom
6 currently anticipates that Brocade’s FC SAN business will contribute
7 approximately \$900 million of pro forma non-GAAP EBITDA in its fiscal year
8 2018.

9 The board of directors of Brocade and the Executive Committee of the board of
10 directors of Broadcom have unanimously approved the transaction, which is
11 presently expected to close in the second half of Broadcom’s fiscal year 2017 which
12 commenced on October 31, 2016, subject to regulatory approvals in various
13 jurisdictions, customary closing conditions as well as the approval of Brocade’s
14 stockholders. The closing of the transaction is not subject to any financing
15 conditions, nor is it conditioned on the divestiture of Brocade’s IP Networking
16 business.

17 C. The Preclusive Deal Protection Measures

18 44. As part of the Merger Agreement, Defendants agreed to certain onerous and
19 preclusive deal protection devices that operate conjunctively to make the Proposed Transaction a
20 *fait accompli* and ensure that no competing offers will emerge for the Company.

21 45. The Merger Agreement contains a strict “no solicitation” provision, which provides
22 that Brocade may not solicit, initiate, endorse, knowingly encourage or knowingly facilitate
23 alternative acquisition proposals with other potential acquirors for the Company.

24 46. The Merger Agreement also contains an “information rights” provision, which
25 requires Brocade to advise Broadcom within one business day of any acquisition proposal or
26 request for nonpublic information that it receives, as well as the identity of the party making the
27 proposal or request and the material terms thereof. In addition, Brocade must promptly notify
28 Broadcom of all developments in the discussions with any alternative bidder.

47. Moreover, in the event that the Board receives an unsolicited proposal, the Board
may only effectuate a change of its recommendation in favor of the Proposed Transaction, or
otherwise pursue such proposal if it first determines in its good faith judgment, *after consultation*

1 *with outside counsel*, that such proposal constitutes a Superior Proposal (as defined in the Merger
2 Agreement) and that failure to take such action would constitute a breach of the Board's fiduciary
3 duties.

4 48. Further, even after the Board determines that the failure to effectuate a Change of
5 Board Recommendation regarding the Proposed Transaction, or otherwise pursue the alternative
6 proposal would result in a breach of the Board's fiduciary duties, the Merger Agreement then
7 provides Broadcom with "matching rights." Specifically, the Merger Agreement requires that
8 Brocade must first provide Broadcom with at least four business days written notice of its intention
9 to change their recommendation during which time it must negotiate with Broadcom to enable it
10 to modify its proposal such that the alternative proposal no longer constitutes a Superior Proposal.
11 Finally, in the event that the alternative proposal is modified such that it again constitutes a superior
12 proposal, Brocade must repeat the process again and provide written notice and grant Broadcom
13 no less than two business days to renegotiate and modify its proposal.

14 49. In other words, despite the inadequacy of the proposed consideration, the Merger
15 Agreement gives Broadcom access to any rival bidder's information and allows Broadcom a free
16 right to top any superior offer simply by matching it. Accordingly, no rival bidder is likely to
17 emerge and act as a stalking horse, because the Merger Agreement unfairly assures that any
18 "auction" will favor Broadcom and will allow Broadcom to piggy-back upon the due diligence of
19 the foreclosed second bidder.

20 50. The Merger Agreement further provides that the Company must pay Broadcom a
21 termination fee of \$195 million following termination of the Merger Agreement under specified
22 circumstances including if Brocade enters into a Superior Proposal.

23 51. As such, any competing bidder will have to pay a substantial naked premium just
24 to match the inadequate consideration proposed by Broadcom. Thus, the deal protection devices
25
26
27
28

1 unreasonably deter an alternative bidder from making a superior proposal that will adequately
2 compensate the Company's shareholders.

3 52. Additionally, Brocade's officers and directors have entered into support
4 agreements, pursuant to which they have agreed to vote their Company shares in favor of the
5 Proposed Transaction.

6 53. These preclusive deal protection provisions illegally restrain the Company's ability
7 to solicit or engage in negotiations with any third party regarding a proposal to acquire all or a
8 significant interest in the Company and otherwise dissuade the Board from fulfilling its fiduciary
9 duties to Brocade shareholders. The circumstances under which third parties may submit an
10 alternative proposal, or where the Board may respond to an unsolicited written bona fide proposal
11 for an alternative acquisition that constitutes or would reasonably be expected to constitute a
12 superior proposal, are too narrowly circumscribed to provide an effective "fiduciary out" under
13 the circumstances.
14

15 54. The consideration to be paid to plaintiff and the Class in the Proposed Transaction
16 is inadequate.
17

18 55. Among other things, the intrinsic value of the Company is materially in excess of
19 the amount offered in the Proposed Transaction.
20

21 56. The merger consideration also fails to adequately compensate the Company's
22 stockholders for the significant synergies that will result from the merger.

23 57. Accordingly, the Proposed Transaction will deny Class members their right to share
24 proportionately and equitably in the true value of the Company's valuable and profitable business,
25 and future growth in profits and earnings.

26 58. Meanwhile, certain of the Company's officers and directors stand to receive
27 substantial benefits as a result of the Proposed Transaction.
28

1 59. For example, Individual Defendant Carney stands to receive \$25,298,052 in
2 connection with the Proposed Transaction, and the Company's four other named executive officers
3 stand to receive \$20,088,909.

4 **D. The Materially Incomplete and Misleading Proxy**

5 60. The Proxy recommending that Brocade shareholders vote in favor of the Proposed
6 Transaction fails to disclose and/or materially misrepresents material information to the
7 shareholders of the Company preventing them from making an informed decision regarding the
8 Proposed Transaction. Specifically, the Proxy omits and/or misrepresents material information
9 concerning, among other things: (i) the "Certain Company Forecasts"; (ii) the "Opinion of
10 Evercore Group L.L.C."; (iii) the "Reasons for the Merger; Recommendation of the Board of
11 Directors;" and (iv) the "Background of the Merger."

12
13 61. The Proxy Statement omits material information regarding Brocade's financial
14 projections and the *Sum of the Parts Analysis* performed by the Company's financial advisor,
15 Evercore Group L.L.C. ("Evercore"), in support of its so-called fairness opinion.

16
17 62. For example, the Proxy Statement fails to disclose the line items used in the
18 calculation of unlevered free cash flow for each of the years of projections, including changes in
19 working capital, changes in deferred revenue, stock-based compensation expense, acquisition and
20 integration expense, restructuring charges, asset impairment charges, gains or losses relating to
21 sales of assets and, for fiscal year 2016 only, the impact to cost of revenues from certain purchase
22 accounting adjustments to inventory, as listed in the definition.

23
24 63. With respect to Evercore's *Sum of the Parts Analysis*, the Proxy Statement fails to
25 disclose Evercore's basis for using the cash flows for the entire Company to value the individual
26 and separate Storage Networking, and Switching, Routing, and Analytics ("SRA") and Software
27 Networking, components. Similarly, with respect to the Campus component, the Proxy Statement
28

1 fails to disclose Evercore's basis for using the estimate of the entire Company's revenue to value
2 the individual segment. This information is particularly material in light of the fact that, with
3 respect to the Ruckus segment, Evercore used cash flow projections for the Ruckus business
4 specifically, as opposed for the entire Company.

5
6 64. Moreover, with respect to the SRA and Software Networking segments, the Proxy
7 Statement states that Evercore used financial projections through year 2026, but the Proxy
8 Statement fails to disclose the projections for years 2022 through 2026.

9 65. The disclosure of projected financial information is material because it provides
10 stockholders with a basis to project the future financial performance of a company, and allows
11 stockholders to better understand the financial analyses performed by the company's financial
12 advisor in support of its fairness opinion.

13
14 66. Moreover, when a banker's endorsement of the fairness of a transaction is touted
15 to shareholders, the valuation methods used to arrive at that opinion as well as the key inputs and
16 range of ultimate values generated by those analyses must also be fairly disclosed.

17 67. The above-referenced omitted information, if disclosed, would significantly alter
18 the total mix of information available to Brocade's stockholders.

19 **FIRST CAUSE OF ACTION**

20 **(Against Brocade and the Individual Defendants for Violations of Sections 14(a) of the**
21 **Exchange Act and Rule 14a-9 Promulgated Thereunder)**

22 68. Plaintiff repeats and realleges each allegation set forth herein.

23 69. During the relevant period, Brocade and the Individual Defendants disseminated
24 the false and misleading Proxy specified above, which failed to disclose material facts necessary
25 in order to make the statements made, in light of the circumstances under which they were made,
26 not misleading in violation of section 14(a) of the Exchange Act and SEC Rule 14a-9 promulgated
27 thereunder.
28

1 70. By virtue of their positions within the Company, the Individual Defendants were
 2 aware of this information and of their duty to disclose this information in the Proxy. The Proxy
 3 was prepared, reviewed, and/or disseminated by the defendants. The Proxy misrepresented and/or
 4 omitted material information about the sale process for the Company, the unfair consideration
 5 offered in the Proposed Transaction, and the actual intrinsic value of the Company's assets.
 6 Brocade and the Individual Defendants were at least negligent in filing the Proxy with these
 7 materially false and misleading statements. Brocade and the Individual Defendants have also failed
 8 to correct the Proxy and the failure to update and correct false statements is also a violation of
 9 section 14(a) of the Exchange Act and SEC Rule 14a-9 promulgated thereunder.
 10

11 71. The omissions and false and misleading statements in the Proxy are material in that
 12 a reasonable stockholder would consider them important in deciding whether to vote in favor of
 13 the Proposed Transaction. In addition, a reasonable investor would view a full and accurate
 14 disclosure as significantly altering the "total mix" of information made available in the Proxy and
 15 in other information reasonably available to stockholders.
 16

17 72. Plaintiff has no adequate remedy at law. Only through the exercise of this Court's
 18 equitable powers can Plaintiff be fully protected from immediate and irreparable injury, which
 19 Brocade and the Individual Defendants' actions threaten to inflict.
 20

SECOND CAUSE OF ACTION

(Against the Individual Defendants for Violation of Section 20(a) of the Exchange Act)

21
 22 73. Plaintiff repeats and realleges each allegation set forth herein.
 23

24 74. The Individual Defendants acted as controlling persons of Brocade within the
 25 meaning of section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as
 26 officers or directors of Brocade and participation in or awareness of the Company's operations or
 27 intimate knowledge of the false statements contained in the Proxy filed with the SEC, they had the
 28

1 power to influence and control and did influence and control, directly or indirectly, the decision-
2 making of the Company, including the content and dissemination of the various statements which
3 Plaintiff contends are false and misleading.

4 75. Each of the Individual Defendants was provided with or had unlimited access to
5 copies of the Proxy and other statements alleged by Plaintiff to be misleading prior to or shortly
6 after these statements were issued and had the ability to prevent the issuance of the statements or
7 cause the statements to be corrected.

8 76. In particular, each of the Individual Defendants had direct and supervisory
9 involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had
10 the power to control or influence the particular transactions giving rise to the securities violations
11 as alleged herein, and exercised the same. The Proxy at issue contains the unanimous
12 recommendation of each of the Individual Defendants to approve the Proposed Transaction. They
13 were, thus, directly involved in the making of this document.

14 77. In addition, as the Proxy sets forth at length, and as described herein, the Individual
15 Defendants were each involved in negotiating, reviewing, and approving the Proposed
16 Transaction. The Proxy purports to describe the various issues and information that they reviewed
17 and considered — descriptions which had input from the Individual Defendants.

18 78. By virtue of the foregoing, the Individual Defendants have violated section 20(a)
19 of the Exchange Act.

20 79. Plaintiff has no adequate remedy at law.

21
22
23
24 **PRAYER FOR RELIEF**

25 **WHEREFORE**, Plaintiff demands relief in his favor against Defendants as follows:

26 A. Declaring that this action is properly maintainable as a Class action and certifying
27 Plaintiff as Class representatives;

1 B. Enjoining Defendants, their agents, counsel, employees and all persons acting in
2 concert with them from consummating the Proposed Transaction, unless and until the Company
3 discloses the material information discussed above which has been omitted from the Proxy and
4 adopts and implements a procedure or process to obtain the best available terms for shareholders;

5 C. Rescinding, to the extent already implemented, the Proposed Transaction or any of
6 the terms thereof, or granting Plaintiff rescissory damages;

7 D. Directing the Individual Defendants to account to Plaintiff for all damages suffered
8 as a result of the wrongdoing;

9 E. Awarding Plaintiff the costs and disbursements of this action, including reasonable
10 attorney' and experts' fees; and

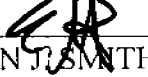
11 F. Granting such other and further equitable relief as this Court may deem just and
12 proper.
13

14
15 **JURY DEMAND**

16 Plaintiff prays for a jury trial on all issues and in all proceedings so triable.

17 Dated: December 21, 2016

BRODSKY & SMITH, LLC

18
19 By: 
20 EVAN J. SMITH (S.B. # 242352)
21 9595 Wilshire Boulevard, Suite 900
22 Beverly Hills, CA 90212
23 Tel: (877) 834-2590

24 BROWER PIVEN
25 A Professional Corporation
26 Daniel Kuznicki
27 475 Park Avenue South, 33rd Floor
28 New York, NY 10016
Tel. (212) 501-9000

Attorneys for Plaintiff

EXHIBIT “1”

PLAINTIFF'S CERTIFICATION

DOUGLAS BRADAN ("Plaintiff") declares that:

1. I have reviewed the accompanying complaint and have authorized its filing.
2. Plaintiff did not purchase the security that is the subject of this action at the direction of plaintiff's counsel or in order to participate in this private action.

3. Plaintiff is willing to serve as a representative party on behalf of the class, including providing testimony at deposition and trial, if necessary. Plaintiff wants to serve as a lead plaintiff in this litigation either individually or as part of a group, and Plaintiff understands that a lead plaintiff is a representative party who must act on behalf of and in the best interests of other class members in directing the action. If Plaintiff is appointed as lead plaintiff individually or as part of a group, Plaintiff is ready, willing and able to diligently fulfill the obligations of a lead plaintiff and representative party.

4. Plaintiff currently owns 300 shares of Brocade Communications Systems, Inc.

5. During the three years prior to the date of this Certification, Plaintiff has not sought to serve or served as a representative party for a class under the federal securities laws.

6. Plaintiff will not accept any payment for serving as a representative party on behalf of the class beyond the Plaintiff's pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the class as ordered or approved by the court. Plaintiff understands that this is not a claim form and that Plaintiff's ability to share in any recovery as a member of the class is unaffected by Plaintiff's decision to serve as a representative party. Plaintiff has chosen to seek involvement in this litigation as a Lead Plaintiff in order to choose which counsel will represent Plaintiff and the class.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 21st day of DECEMBER 2016.

Douglas Bradan
Signature

Brower Piven, A Professional Corporation
1925 Old Valley Road
Stevenson, Maryland 21153
Telephone: 410-332-0030
Facsimile: 410-685-1300
www.browerpiven.com

JS-CAND 44 (Rev. 07/16)

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS</p> <p>DOUGLAS BRAGAN, Individually and On Behalf of All Others Similarly Situated</p> <p>(b) County of Residence of First Listed Plaintiff <small>Cook County IL</small> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) Evan J. Smith, Brodsky & Smith, LLC, 9595 Wilshire Boulevard, Suite 900, Beverly Hills, CA 90212, (Tel) (877) 534-2590 Fax: (310) 247-0160 Email: esmith@brodsky-smith.com</p>	<p>DEFENDANTS</p> <p>BROCADE COMMUNICATIONS SYSTEMS, INC., et al.</p> <p>County of Residence of First Listed Defendant <small>Santa Clara County CA</small> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED Attorneys (If Known)</p>
---	--

<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th>PTF</th> <th>DEF</th> </tr> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4 <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5 <input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6 <input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF	PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6
	PTF	DEF	PTF	DEF																	
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input type="checkbox"/> 4																	
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5																	
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6																	

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment Of Veteran's Benefits <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p>PERSONAL INJURY</p> <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC § 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC § 158 <input type="checkbox"/> 423 Withdrawal 28 USC § 157
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p>CIVIL RIGHTS</p> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer w/Disabilities-Employment <input type="checkbox"/> 446 Amer. w/Disabilities-Other <input type="checkbox"/> 448 Education	<p>PRISONER PETITIONS</p> <p>Habeas Corpus:</p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p>Other:</p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee-Conditions of Confinement	<p>LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<p>PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
			<p>SOCIAL SECURITY</p> <input type="checkbox"/> 861 IIIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC § 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input checked="" type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
			<p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC § 7609	
		<p>IMMIGRATION</p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN *(Place an "X" in One Box Only)*

1 Original Proceeding 2 Removed from State Court 3 Retanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. *(Do not cite jurisdictional statutes unless diversity):*
 15 U.S.C. § 78aa and 28 U.S.C. § 1333

Brief description of cause:
 Violations of the Exchange Act

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY *(See instructions)* JUDGE: Hon. Eduardo M. Chen DOCKET NUMBER: 3:16-cv-07081

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)
(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE: 12/21/2016 SIGNATURE OF ATTORNEY OF RECORD: 

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)."
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket.
- Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Federal Rule of Civil Procedure 23.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: "the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated."
- Date and Attorney Signature.** Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Brocade Communications Violated Securities Law, Suit Claims](#)
