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Proposed Lead Plaintiff

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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 SONAM BAKSHI, Individually And On
13 Behalf of All Others Similarly Situated,

14 Plaintiff,

15 vs.

16 HENRY SAMUELI, SCOTT A.
17 MCGREGOR, WILLIAM J. RUEHLE,
BRUCE E. KIDDOO, AND
18 BROADCOM CORPORATION,

19 Defendants.
20
21
22

Case Number:
CV 06-5036 R (CWx)

**NOTICE OF MOTION, MOTION
AND MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF STATE
TEACHERS RETIREMENT
SYSTEM OF OHIO'S MOTION
FOR APPOINTMENT AS LEAD
PLAINTIFF, APPROVAL OF
SELECTION OF LEAD
COUNSEL AND
CONSOLIDATION OF
RELATED ACTIONS**

DATE: November 6, 2006
TIME: 10:00 A.M.
CTRM: 8; Hon. Manuel L. Real

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. BACKGROUND OF THE ACTION2

II. ARGUMENT5

 A. STRS SHOULD BE APPOINTED LEAD PLAINTIFF5

 1. The Legal Requirements Under The PSLRA5

 2. Initial Class Notice.....6

 3. STRS Has The Largest Financial Interest In The Outcome Of This
 Litigation.....6

 4. STRS Satisfies The Requirements Of Rule 239

 B. STRS’ SELECTION OF LEAD COUNSEL SHOULD BE
 APPROVED AS LEAD COUNSEL FOR THE CLASS 11

 C. ANY SUBSEQUENT RELATED MATTER SHOULD BE
 CONSOLIDATED WITH THIS ACTION12

III. CONCLUSION.....14

1 **TABLE OF AUTHORITIES**

2
3 **Federal Cases**

4 *Borenstein v. Finova Group*,
5 No. CIV 00-619-PHX-SMM,
6 2000 U.S. Dist. LEXIS 14732 (D. Ariz. Aug. 28, 2000)8

7 *Gluck v. CellStar Corp.*,
8 976 F. Supp. 542 (N.D. Tex. 1997).....8

9 *Hanlon v. Chrysler Corp.*,
10 150 F.3d 1011 (9th Cir. 1998).....10

11 *Hanon v. Dataproducts Corp.*,
12 976 F.2d 497 (9th Cir. 1992).....10

13 *In re Cavanaugh*,
14 306 F.3d 726 (9th Cir. 2002).....11

15 *In re Gemstar-TV Guide Int'l Secs. Litig.*,
16 209 F.R.D. 447 (C.D. Cal. 2002).....7

17 *In re Lucent Techs., Inc. Sec. Litig.*,
18 194 F.R.D. 137 (D.N.J. 2000)9, 10

19 *In re Network Assocs. Sec. Litig.*,
20 76 F. Supp. 2d 1017 (N.D. Cal. 1999).....8

21 *In re Peregrine Sys. Sec. Litig.*,
22 Civil No. 02cv870-J (RBB),
23 2002 U.S. Dist. LEXIS 27690 (S.D. Cal. Oct. 9, 2002).....9

24 *In re THQ, Inc. Sec. Litig.*,
25 No. CV 00-1783 AHM (Ex),
26 2002 U.S. Dist. LEXIS 7753 (C.D. Cal. Mar. 22, 2002)10

27 *In re Unumprovident Corp. Sec. Litig.*,
28 No. 1:03-CV-049, 2003 U.S. Dist. LEXIS 24633 (E.D. Tenn. Nov. 6, 2003)8

In re Vicuron Pharms. Inc. Sec. Litig.,
225 F.R.D. 508 (E.D. Pa. 2004)7

Investors Research Co. v. U.S. Dist. Court for the Cent. Dist.,
877 F.2d 777 (9th Cir. 1989).....12

Lerwill v. Inflight Motion Pictures, Inc.,
582 F.2d 507 (9th Cir. 1978).....11

1	<i>Osher v. Guess?, Inc.</i> ,	
2	No. CV 01-00871 LGB (RNBx),	
	2001 U.S. Dist. LEXIS 6057 (C.D. Cal. Apr. 26, 2001).....	6, 11
3	<i>Schriver v. Impac Mortg. Holdings, Inc.</i> ,	
4	Case No. SACV 06-31 CJC (RNBx),	
	2006 U.S. Dist. LEXIS 40607 (C.D. Cal. May 1, 2006).....	8, 9
5	<i>Siegall v. Tibco Software, Inc.</i> ,	
6	No. C 05-2146 SBA,	
7	2006 U.S. Dist. LEXIS 26780 (N.D. Cal. Feb. 24, 2006).....	12, 13
8	<i>Southwest Marine, Inc. v. Triple A Machine Shop, Inc.</i> ,	
	720 F. Supp. 805 (N.D. Cal. 1989).....	12
9	<i>Squyres v. Union Texas Petroleum Holdings, Inc.</i> ,	
10	No. CV 98-6085-LGB(AIJx),	
11	1998 U.S. Dist. LEXIS 22945 (C.D. Cal. Nov. 2, 1998).....	6
12	<i>Takeda v. Turbodyne Techs., Inc.</i> ,	
	67 F. Supp. 2d 1129 (C.D. Cal. 1999).....	11, 12
13	<i>Tanne v. Autobytel, Inc.</i> ,	
14	226 F.R.D. 659 (C.D. Cal. 2005).....	9
15	<i>Weiss v. Friedman, Billings, Ramsey Group, Inc.</i> ,	
16	No. 05-cv-04617 (RJH),	
	2006 U.S. Dist. LEXIS 3028 (S.D.N.Y. Jan. 24, 2006).....	10
17		
18	Federal Statutes	
19	15 U.S.C. §78j(b)	2
20	15 U.S.C. §78t(a)	2
21	15 U.S.C. §78u-4(a)(3)	5
22	15 U.S.C. §78u-4(a)(3)(A).....	5
23	15 U.S.C. §78u-4(a)(3)(B).....	passim
24	17 C.F.R. §240.10b-5.....	2
25	17 C.F.R. §240.14a-9	2
26	Federal Rules	
27	Federal Rule of Civil Procedure 23(a).....	passim
28	Federal Rule of Civil Procedure 42(a).....	12, 13

1
2
3
4
5
6
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Other Authorities

S. Rep. No. 104-98 (1995)7

1 **TO: ALL PARTIES AND THEIR COUNSEL OF RECORD**

2 **PLEASE TAKE NOTICE** that on November 6, 2006 at 10:00 a.m., or as
3 soon thereafter as this matter may be heard in the courtroom of the Honorable
4 Manuel L. Real, located at 312 N. Spring Street, Los Angeles, California 90012,
5 State Teachers Retirement System of Ohio ("STRS") will move this Court pursuant
6 to Section 21D(a)(3)(B) of the Securities Exchange Act of 1934 (the "Exchange
7 Act"), as amended by the Private Securities Litigation Reform Act of 1995 (the
8 "PSLRA"), 15 U.S.C. §78u-4(a)(3)(B), for an Order:

9 (a) appointing STRS as Lead Plaintiff in the action;

10 (b) approving Berman DeValerio Pease Tabacco Burt & Pucillo ("Berman
11 DeValerio") as Lead Counsel for the Class and Benesch Friedlander Coplan &
12 Aronoff LLP as of counsel; and

13 (c) consolidating any related actions that may be filed.

14 This motion is made on the grounds that STRS is the most adequate plaintiff,
15 as defined by the PSLRA, based on its losses of approximately \$9,138,656 which
16 were suffered as a result of defendants' wrongful conduct as alleged in the above-
17 referenced action. Further, STRS satisfies the requirements of Rule 23(a) of the
18 Federal Rules of Civil Procedure, as its claims are typical of those of the other
19 members of the proposed Class, and it will fairly and adequately represent the Class.
20 In addition, STRS has selected and retained counsel with substantial experience in
21 prosecuting securities fraud class actions to serve as lead counsel for the Class.

22 This motion is based on the notice of motion, the memorandum of points and
23 authorities in support thereof, the Declaration of Joseph J. Tabacco, Jr. in support
24 thereof ("Tabacco Decl.") and the Declaration of William J. Neville ("Neville
25 Declaration") attached thereto, the pleadings and other files herein and such other
26 written and oral arguments as may be presented to the Court.

27 ///

28 ///

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. BACKGROUND OF THE ACTION**

3 This is a securities class action on behalf of public investors who purchased
4 the securities of Broadcom Corporation (“Broadcom” or the “Company”) during the
5 period from July 21, 2005 through July 13, 2006, inclusive (“Class Period”). Named
6 as defendants in the first filed complaint on file, *Bakshi v. Henry Samueli, et al.*,
7 No. CV 06-5036 R (CWx) (“*Bakshi* case”), are the Company, Henry Samueli, Scott
8 A. McGregor, Willian J. Ruehle and Bruce E. Kiddoo.

9 Plaintiff alleges that, throughout the Class Period, defendants violated federal
10 securities laws by issuing false and misleading statements that artificially inflated
11 Broadcom’s stock price, in violation of Sections 10(b) and 20(a) of the Exchange
12 Act, 15 U.S.C. §§78j(b) and 78t(a), and Rule 10b-5 promulgated thereunder by the
13 Securities and Exchange Commission (“SEC”), 17 C.F.R. §§240.10b-5 and 240.14a-
14 9.

15 Specifically, the complaint alleges that defendants: (a) deceived the investing
16 public regarding Broadcom’s business, operations, management and the intrinsic
17 value of Broadcom securities; (b) enabled defendants to backdate billions of dollars
18 in options granted to the senior officers and directors of the Company; (c) enabled
19 Broadcom insiders to sell tens of millions of dollars of their privately held
20 Broadcom shares while in possession of material adverse non-public information
21 about the Company; and (d) caused plaintiff and other members of the Class to
22 purchase Broadcom securities at artificially inflated prices.

23 On May 16, 2006, the Center for Financial Research and Analysis (“CFRA”)
24 published a report that Broadcom was one of the companies that it suspected of
25 having backdated stock options for executives. On May 19, 2006, the *Los Angeles*
26 *Times* reported on the findings of the CFRA. After the close of the markets on May
27 19, 2006, *Bloomberg Business News* reported on the CFRA analysis and, on May 20,
28 2006, Broadcom’s stock price declined \$2.86 per share to close at \$34.34 per share.

1 Then, on May 19, 2006, Merrill Lynch and JP Morgan issued reports criticizing
2 Broadcom's practices of issuing stock options to executives at what appeared to be
3 backdated dates. On May 22, 2006, *Dow Jones News Wire*, in its *MarketWatch*
4 column, reiterated the findings in the Merrill Lynch and JP Morgan analyses.
5 Broadcom's stock price fell further to close at \$33.35 on May 25, 2006.

6 Then, on July 14, 2006, before the market opened, the Company announced
7 that, as a result of discrepancies with the reporting of some of the Company's stock
8 option grants, it planned to restate its financial statements for each of the years
9 ended December 31, 2000 through December 31, 2005, as well as for the first
10 quarter of 2006. The Company also announced that it expected to record an
11 additional non-cash stock-based compensation expense that would likely be in
12 excess of \$750 million (substantially all of which, it believed, would be recorded in
13 the years 2000-2003). Specifically, the Company's Form 8-K, filed with the SEC on
14 July 14, 2006, provided that:

15 Although the review is ongoing, the Audit Committee has
16 preliminarily concluded that, pursuant to the requirements of Accounting
17 Principles Board Opinion No. 25, Accounting for Stock Issued to
18 Employees (APB 25), the accounting measurement dates for certain stock
19 options grants awarded during the years 2000-2002 differ from the
20 measurement dates previously used for such awards. Specifically, the
21 Committee has determined that, as to the affected grants, allocations to
22 individual recipients and/or formal corporate approvals had not been
23 completed as of the original accounting measurement dates. As a result,
24 new accounting measurement dates will apply to the affected option
25 grants.

26 Consequently, Broadcom presently expects to record additional
27 non-cash stock-based compensation expense. Although the review is
28 ongoing, and the company is not yet in a position to quantify the
29 expected adjustments, **it is currently estimated that the aggregate
30 additional non-cash stock-based compensation expense to be
31 recorded pursuant to APB 25 is likely to be in excess of \$750 million.**
32 The company currently believes that substantially all of that non-cash

1 expense will be recorded in the years 2000-2003.

2 **The company presently expects to restate its financial**
3 **statements for each of the years ended December 31, 2000 through**
4 **December 31, 2005 as well as for the first quarter of 2006.**

5 On July 10, 2006 the Audit Committee determined, with the
6 concurrence of Ernst & Young, that the company's financial statements
7 and the related reports of Ernst & Young, and all earnings press releases
8 and similar communications issued by the company, relating to periods
9 after 1999 should not be relied upon pending completion of the
10 restatements.

11 (Emphasis added.)

12 On July 15, 2006, the *Wall Street Journal* described the Broadcom
13 announcement as "one of the biggest restatements yet in the growing scandal over
14 stock-options practices." On the next trading day, Broadcom stock closed at \$27.37
15 per share, down from \$28.13 per share on July 14, 2006.

16 Before the market opened on September 8, 2006, Broadcom released a
17 supplemental report on its equity award review announcing that it expects to record
18 an option-compensation expense of around \$1.5 billion and also plans to restate
19 financial results for 1998 and 1999. Specifically, the Company stated that:

20 While the equity award review is still ongoing, Broadcom has
21 identified additional stock option grants for which the measurement dates
22 for purposes of APB 25 differ from those originally used to record such
23 awards. As a consequence, the company now expects that the aggregate
24 additional non-cash stock-based compensation expense to be recorded
25 under APB 25 when it completes the **restatement of its financial**
statements will be at least twice the amount previously estimated and
could be substantially more depending upon the resolution of certain
accounting issues.

26 The incremental non-cash stock-based compensation expense
27 relates to transactions or fiscal periods as to which the review had not
28 commenced or had not been completed prior to the July 14th

1 announcement. The grants at issue were awarded between June 1998 and
2 May 2003. Accordingly, the Audit Committee has determined, with the
3 concurrence of its advisers, that the **financial statements for 1998 and**
4 **1999 should also be restated and that the company's financial**
5 **statements and the related reports of its independent registered**
6 **public accounting firm, and all earnings press releases and similar**
7 **communications issued by the company, relating to periods after**
8 **1997 should not be relied upon pending completion of the**
9 **restatements.**

10 A substantial majority of the aggregate additional non-cash stock-
11 based compensation expense to be recorded by the company as a result of
12 the equity award review will be expensed in 2003 and prior periods.

13 (Emphasis added.)

14 **II. ARGUMENT**

15 **A. STRS SHOULD BE APPOINTED LEAD PLAINTIFF**

16 As set forth herein, STRS is the most adequate lead plaintiff because it
17 appears to be the shareholder who has suffered the largest losses and satisfies the
18 adequacy and typicality requirements of Fed. R. Civ. P. 23. Indeed, as a public
19 pension fund, it is precisely the type of investor Congress sought to encourage to
20 represent classes in securities fraud actions when it enacted the PSLRA.

21 **1. The Legal Requirements Under The PSLRA**

22 The PSLRA, 15 U.S.C. §78u-4(a)(3), sets forth procedures for the
23 appointment of lead plaintiffs to oversee class actions brought under the Exchange
24 Act. Within 20 days after the date on which a class action is filed under the PSLRA,
25 *see* 15 U.S.C. §78u-4(a)(3)(A)(i), the plaintiff or plaintiffs who filed the first
26 complaint shall cause to be published, in a widely circulated national business-
27 oriented publication or wire service, a notice advising members of the purported
28 plaintiff class: (a) of the pendency of the action, the claims asserted therein and the
purported class period; and (b) that, not later than 60 days after the date on which the
notice is published, any member of the purported class may move the court to serve
as lead plaintiff of the purported class.

1 Further, under 15 U.S.C. §78u-4(a)(3)(B)(iii)(I), the Court is directed to
2 consider all motions by plaintiffs or purported class members to appoint lead
3 plaintiffs filed in response to any such notice. Under this section, the Court “shall”
4 appoint “the presumptively most adequate plaintiff” to serve as lead plaintiff and
5 shall presume that plaintiff is the person, or group of persons, that:

- 6 (aa) has either filed the complaint or made a motion in response
7 to a notice . . . ;
- 8 (bb) in the determination of the court, has the largest financial
9 interest in the relief sought by the class; and
- 10 (cc) otherwise satisfies the requirements of Rule 23 of the
11 Federal Rules of Civil Procedure.

12 *See Squyres v. Union Texas Petroleum Holdings, Inc.*, No. CV 98-6085-LGB(AIJx),
13 1998 U.S. Dist. LEXIS 22945, at *5 (C.D. Cal. Nov. 2, 1998); *Osher v. Guess?*,
14 *Inc.*, No. CV 01-00871 LGB (RNBx), 2001 U.S. Dist. LEXIS 6057, at *11 (C.D.
15 Cal. Apr. 26, 2001).

16 2. Initial Class Notice

17 Plaintiff in the first-filed action caused notice to be published on *Market Wire*
18 on August 13, 2006. *See* Tabacco Decl., Exhibit A. STRS has filed this motion
19 before the expiration of the 60-day period from such publication. In addition and
20 pursuant to the requirements of the PSLRA, STRS has duly signed a Declaration
21 certifying that it is familiar with the factual and legal issues alleged in this case and
22 as set forth in the *Bakshi* case on file in this action, and is willing to serve as
23 representative plaintiff on behalf of the Class. *See* Tabacco Decl., Exh. B.

24 3. STRS Has The Largest Financial Interest In The Outcome Of 25 This Litigation

26 As noted above, the PSLRA establishes a rebuttable presumption that the
27 most adequate plaintiff is the person who “has the largest financial interest in the
28 relief sought by the class,” and who also satisfies the requirements of Fed. R. Civ. P.
23. 15 U.S.C. §78u-4(a)(3)(B)(iii)(I). This presumption can only be rebutted by

1 proof that the presumptively most adequate plaintiff “will not fairly and adequately
2 protect the interests of the class” or is “subject to unique defenses that render such
3 plaintiff incapable of adequately representing the class.” 15 U.S.C. §78u-
4 4(a)(3)(B)(iii)(II); *In re Gemstar-TV Guide Int’l Secs. Litig.*, 209 F.R.D. 447, 450
5 (C.D. Cal. 2002).

6 STRS is one of the nation’s premier retirement systems, serving more than
7 400,000 active, inactive and retired Ohio public educators. With assets of
8 approximately \$68 billion, STRS is one of the largest public pension funds in the
9 country. *See* Neville Declaration, ¶2.

10 As of the time of the filing of this motion, STRS believes that it has the largest
11 financial interest of anyone in the relief sought by the Class. STRS purchased
12 1,183,459.5 shares of Broadcom common stock and suffered losses of
13 \$9,138,655.67.¹ *See* Tabacco Decl., Exh. B. Because STRS possesses the largest
14 financial interest in the outcome of this litigation, it may be presumed to be the
15 “most adequate” plaintiff. 15 U.S.C. §78u-4(a)(3)(B)(iii)(I)(bb).

16 In fact, Congress expressed a desire that institutional investors, such as public
17 pension plans like STRS here, assume leadership of securities class actions as a
18 means to eliminate lawyer-driven litigation. *See* H. R. Conference Report on
19 Securities Litigation Reform, S. Rep. No. 104-98, at 11 (1995), *reprinted in* 1995
20 U.S.C.C.A.N. 679, 690 (“The Committee believes that increasing the role of
21 institutional investors in class actions will ultimately benefit the class and assist the
22 courts The Committee believes that an institutional investor acting as lead
23 plaintiff can, consistent with its fiduciary obligations, balance the interests of the
24 class with the long-term interests of the company and its public investors.”); *In re*
25 *Vicuron Pharms. Inc. Sec. Litig.*, 225 F.R.D. 508, 511 (E.D. Pa. 2004) (“Under the
26 PSLRA, institutional investors are considered preferred lead plaintiffs. The

27 ¹ These losses are calculated on a first-in-first-out basis. STRS’ losses on a last-in-
28 first-out basis are \$2,124,796.

1 Conference Committee Report states that the PSLRA sought ‘to increase the
2 likelihood that institutional investors will serve as lead plaintiffs.’”) (citations
3 omitted); *In re Network Assocs. Sec. Litig.*, 76 F. Supp. 2d 1017, 1020 (N.D. Cal.
4 1999) (“Congress expected that the lead plaintiff would normally be an institutional
5 investor with a large stake in the outcome.”).²

6 It is understandable that institutional investors are preferred as lead plaintiffs in
7 securities class actions since they understand the role of fiduciaries and possess the
8 financial sophistication, expertise, experience and resources to ensure that counsel
9 will prosecute the litigation in the best interests of the class. Furthermore,
10 institutional investors have leverage to stand up for the class in order to ensure that
11 counsel actively and properly represents the class and they have the strength and
12 position to demand the best recovery from defendants.

13 The PSLRA’s requirement that the proposed lead plaintiff with the “largest
14 financial interest” in the litigation be considered the presumptive lead plaintiff was,
15 thus, designed by Congress to serve as a mechanism for increasing the involvement
16 of institutional investors in securities class actions. *See Schriver v. Impac Mortg.*
17 *Holdings, Inc.*, Case No. SACV 06-31 CJC (RNBx), 2006 U.S. Dist. LEXIS 40607,
18

19 ² *See also Borenstein v. Finova Group*, No. CIV 00-619-PHX-SMM, 2000 U.S. Dist.
20 LEXIS 14732, at **28-29 (D. Ariz. Aug. 28, 2000) (appointing an institutional
21 investor rather than a group of individual investors with a larger stake in the
22 litigation because it “will satisfy the Congressional goal of increasing the role of
23 institutional investors as the managers of securities class actions”) (citation omitted);
24 *In re Unumprovident Corp. Sec. Litig.*, No. 1:03-CV-049, 2003 U.S. Dist. LEXIS
25 24633, at *17 (E.D. Tenn. Nov. 6, 2003) (“The reasoning behind Congress’
26 preference for institutional investors was based on an understanding of institutional
27 investors and other large shareholders as better able to advance the interests of the
28 class as a whole and effectively monitor the plaintiffs’ attorneys.”) (citation
omitted); *Gluck v. CellStar Corp.*, 976 F. Supp. 542, 548 (N.D. Tex. 1997)
 (“[T]hrough the PSLRA, Congress has unequivocally expressed its preference for
securities fraud litigation to be directed by large institutional investors.”).

1 at **13-15 (C.D. Cal. May 1, 2006) (“The PSLRA’s presumption that the most
2 adequate plaintiff is the plaintiff with the largest financial interest reflects a
3 congressional intent that institutional investors should be appointed lead plaintiff
4 wherever possible, as those investors are most likely to have the most at stake in the
5 case and to be sophisticated and competent litigants for the class.”) (citations
6 omitted); *In re Peregrine Sys. Sec. Litig.*, Civil No. 02cv870-J (RBB), 2002 U.S.
7 Dist. LEXIS 27690, at *52 (S.D. Cal. Oct. 9, 2002) (“The PSLRA’s purpose for
8 looking at the movant with the greatest financial loss is to favor institutional
9 movants for lead plaintiff status”); *In re Lucent Techs., Inc. Sec. Litig.*, 194
10 F.R.D. 137, 151 (D.N.J. 2000) (“Congress intended the creation of the lead plaintiff
11 provision to encourage institutional investors to seek out a more active role in
12 securities action lawsuits. Congress determined that increasing the role of
13 institutional investors in such actions would improve the quality of representation,
14 thus benefiting shareholders and assisting courts.”) (citation omitted).

15 4. STRS Satisfies The Requirements Of Rule 23

16 The PSLRA requires that the lead plaintiff must satisfy the requirements of
17 Fed. R. Civ. P. 23. 15 U.S.C. §78u-4(a)(3)(B)(iii)(I)(cc). With respect to the claims
18 of class representatives, Rule 23(a) requires that (a) the class is so numerous that
19 joinder of all members is impracticable; (b) there are questions of law or fact
20 common to the class; (c) such claims are typical of those of the class; and (d) the
21 representatives will fairly and adequately protect the interests of the class. For
22 purposes of a motion to appoint lead plaintiff pursuant to the PSLRA, however, “the
23 prospective lead plaintiff need only make a prima facie showing that it meets the
24 typicality and adequacy factors.” *Schrivver*, 2006 U.S. Dist. LEXIS 40607, at *16
25 (citation omitted). *See also Tanne v. Autobytel, Inc.*, 226 F.R.D. 659, 666 (C.D. Cal.
26 2005).

27 The typicality requirement under Rule 23 is satisfied when “the claims of the
28 proposed class representative arise from the same event or course of conduct that

1 gave rise to the claims of the other class members and are premised upon the same
2 legal theory.” *Lucent*, 194 F.R.D. at 150 n.18. STRS’ claims are typical of those of
3 the Class. They assert, as do all class members, that defendants violated the
4 Exchange Act by making what they knew, or should have known, were false or
5 misleading statements of material facts concerning Broadcom, or omitting to state
6 material facts necessary to make the statements they did make not misleading.
7 STRS, as did all members of the Class, purchased Broadcom common stock during
8 the Class Period at prices artificially inflated by defendants’ misrepresentations or
9 omissions and were damaged thereby. These shared claims, which are based on the
10 same legal theory and arise from the same events and course of conduct as the class
11 claims, satisfy the typicality requirement of Rule 23(a)(3). *See Hanon v.*
12 *Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (The typicality requirement
13 serves to “assure that the interest of the named representative aligns with the
14 interests of the class.”) (citation omitted).³

15 The adequacy of representation requirement of Rule 23(a)(4) is satisfied
16 where it is established that a representative party “will fairly and adequately protect
17 the interests of the class.”

18 Accordingly, “[t]he Ninth Circuit has held that representation is ‘adequate’
19 when counsel for the class is qualified and competent, the representative’s interests
20 are not antagonistic to the interests of absence [sic] class members, and it is unlikely

21
22 ³ “[T]he test of typicality ‘is whether other members have the same or similar injury,
23 whether the action is based on conduct which is not unique to the named plaintiffs,
24 and whether other class members have been injured in the same course of conduct.’”
25 *In re THQ, Inc. Sec. Litig.*, No. CV 00-1783 AHM (Ex), 2002 U.S. Dist. LEXIS
26 7753, at **12-13 (C.D. Cal. Mar. 22, 2002) (citing *Hanon*, 976 F.2d at 508). *See*
27 *also Weiss v. Friedman, Billings, Ramsey Group, Inc.*, No. 05-cv-04617 (RJH), 2006
28 U.S. Dist. LEXIS 3028, at **16-17 (S.D.N.Y. Jan. 24, 2006). The Ninth Circuit has
held that typical claims need only be “reasonably co-extensive with those of absent
class members; they need not be substantially identical.” *Hanon v. Chrysler Corp.*,
150 F.3d 1011, 1020 (9th Cir. 1998).

1 that the action is collusive.” *Takeda v. Turbodyne Techs., Inc.*, 67 F. Supp. 2d 1129,
2 1137 (C.D. Cal. 1999) (citing *In re Northern Dist. of Cal., Dalkon Shield IUD Prod.*
3 *Liab. Litig.*, 693 F.2d 847, 855 (9th Cir. 1982)). *Accord Lerwill v. Inflight Motion*
4 *Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978). The class representative must
5 also have “sufficient interest in the outcome of the case to ensure vigorous
6 advocacy.” *Takeda*, 67 F. Supp. 2d at 1137 (citing *Riordan v. Smith Barney*, 113
7 F.R.D. 60, 64 (N.D. Ill. 1986)).

8 STRS is an adequate representative for the Class. There is no antagonism
9 between its interests and those of the Class and its losses demonstrate that it has a
10 sufficient interest in the outcome of this litigation.

11 Moreover, STRS’ choice of counsel further supports a finding of adequacy.
12 STRS has retained counsel highly experienced in prosecuting securities class actions
13 such as this action vigorously and efficiently, as its choice to the Court for approval
14 pursuant to 15 U.S.C. §78u-4(a)(3)(B)(v). *See* Tabacco Decl., Exhs. C and D. *See*
15 *also* §II.B., below. Accordingly, there can be little doubt that the oversight of the
16 case will be efficient and effective.

17 **B. STRS’ SELECTION OF LEAD COUNSEL SHOULD BE**
18 **APPROVED AS LEAD COUNSEL FOR THE CLASS**

19 The PSLRA vests authority in the lead plaintiff to select lead counsel, subject
20 to approval by the Court. 15 U.S.C. §78u-4(a)(3)(B)(v); *Osher*, 2001 U.S. Dist.
21 LEXIS 6057, at *15. The Court should only interfere with lead plaintiff’s selection
22 when necessary to “protect the interests of the class.” 15 U.S.C. §78u-
23 4(a)(3)(B)(iii)(II)(aa). *See also In re Cavanaugh*, 306 F.3d 726, 733, 736 (9th Cir.
24 2002).

25 Here, STRS has selected Berman DeValerio to serve as Lead Counsel for the
26 Class and Benesch Friedlander Coplan & Aronoff LLP to serve as of counsel. As
27 detailed in its resume, *see* Tabacco Decl., Exh. C, Berman DeValerio has extensive
28 expertise and experience in the field of securities litigation and has successfully

1 prosecuted numerous securities fraud class actions and obtained excellent recoveries
2 on behalf of defrauded investors. Significantly, STRS has worked with Berman
3 DeValerio before and is familiar with the firm's expertise. Tabacco Decl., Exh. C at
4 8. Thus, the Court may be confident that the Class will receive the highest caliber of
5 legal representation.

6 **C. ANY SUBSEQUENT RELATED MATTER SHOULD BE**
7 **CONSOLIDATED WITH THIS ACTION**

8 Under Fed. R. Civ. P. 42(a), this Court has broad discretion to consolidate
9 cases on its docket, providing that "[w]hen actions involving common questions of
10 law or fact are pending before the court, it may order ... all the actions
11 consolidated". See also *Investors Research Co. v. U.S. Dist. Court for the Cent.*
12 *Dist.*, 877 F.2d 777, 777 (9th Cir. 1989) ("The district court has broad discretion
13 under [Rule 42(a)] to consolidate cases pending in the same district.") (citation
14 omitted). Consolidation is proper when the cases involve common questions of law
15 or fact. See *id.*; *Siegall v. Tibco Software, Inc.*, No. C 05-2146 SBA, 2006 U.S. Dist.
16 LEXIS 26780, at **5-6 (N.D. Cal. Feb. 24, 2006) ("[T]he [PSLRA] directs that
17 cases should be consolidated when more than one action is filed on behalf of a class
18 asserting substantially the same claim or claims.") (citation omitted). Upon
19 establishing that common questions of law exist, "a court weighs the interest of
20 judicial convenience against the potential for delay, confusion and prejudice caused
21 by consolidation." *Southwest Marine, Inc. v. Triple A Machine Shop, Inc.*, 720 F.
22 Supp. 805, 807 (N.D. Cal. 1989). Securities class actions are particularly
23 appropriate for consolidation. See *Takeda*, 67 F. Supp. 2d at 1130 (stating that
24 securities class actions should be consolidated "in the interest of judicial economy
25 and to relieve the parties and absent class members of the burdens associated with
26 participating in duplicative litigation").

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1 In the present matter, only one complaint has been filed on behalf of
2 shareholders to date. *See Bakshi v. Henry Samuelli, et al.*, No. CV 06-5036 R
3 (CWx), filed on August 11, 2006 and assigned to the Honorable Manuel L. Real.

4 However, in the interests of promoting judicial efficiency and conservation of
5 resources, an order of consolidation is necessary for any new case which stems from
6 the same facts or covers the same class period. *See Fed. R. Civ. P. 42(a)*. *See*
7 *Siegall*, 2006 U.S. Dist. LEXIS 26780, at *5 (“The purpose of consolidation is to
8 avoid unnecessary costs or delays that would ensue from proceeding separately with
9 claims or issues sharing common aspects of law or fact.”) (citation omitted).
10 Accordingly, STRS respectfully requests that the Court issue an order, in the form of
11 the accompanying proposed order, providing for consolidation of any new actions
12 arising from the same underlying conduct or violations of securities fraud during the
13 same time period, which may be filed.

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1 **III. CONCLUSION**

2 STRS respectfully requests that the Court appoint STRS as Lead Plaintiff,
3 approve its selection of Berman DeValerio Pease Tabacco Burt & Pucillo to serve as
4 Lead Counsel and Benesch Friedlander Coplan & Aronoff LLP to serve as of
5 counsel, issue an order consolidating all related actions and grant such other relief as
6 the Court may deem to be just and proper.

7 Dated: October 12, 2006

8 **As Special Counsel to Ohio Attorney General Jim Petro**

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10 **BURT & PUCILLO**

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24 **Proposed Lead Counsel**

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