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Minnesota Bakers Union Pension Fund, et al.,
v. Broadcom Corporation, et al.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

SONAM BAKSHI, Individually, and on
Behalf of All Others Similarly Situated,

Plaintiff,

vs.

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

Defendants.

Case No. 2:06-CV-05036-R-CW
**MEMORANDUM OF LAW IN
SUPPORT OF MOTION TO
CONSOLIDATE RELATED
ACTIONS, APPOINT LEAD
PLAINTIFFS, AND APPROVE
SELECTION OF LEAD
COUNSEL**

DATE: November 6, 2006
TIME: ~~10:00 a.m.~~ 1:30 pm
PACE: Courtroom # 9B

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Case No. SA-06-970 CJC (ANX)

MINNESOTA BAKERS UNION
PENSION FUND, TWIN CITIES
BAKERY DRIVERS PENSION FUND,
AND BAKERS LOCAL NO. 433
PENSION FUND, Individually, and on
Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

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

Defendants.

713905v1/107578

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO CONSOLIDATE RELATED ACTIONS,
APPOINT LEAD PLAINTIFFS AND APPROVE SELECTION OF LEAD COUNSEL

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1 **I. INTRODUCTION**

2 Pursuant to 15 U.S.C. § 78u-4(a)(3)(B), Section 21D(a)(3)(B) of the
3 Securities Exchange Act of 1934 (the "Exchange Act")¹, Plaintiffs Minnesota
4 Bakers Union Pension Fund, Twin Cities Bakery Drivers Pension Fund, and Bakers
5 Local No. 433 Pension Fund (collectively, "Bakery Pension Funds" or "Funds")
6 respectfully submit this memorandum of law in support of their motion to: (i)
7 consolidate all Related Actions²; (ii) be appointed Lead Plaintiffs in the
8 consolidated securities class action; and (iii) approve their selection and retention of
9 Heins Mills & Olson, P.L.C. ("Heins Mills") as Lead Counsel and Susman
10 Godfrey, L.L.P. as Liaison Counsel. The Bakery Pension Funds' motion not only
11 satisfies the requirements of the Exchange Act and the PSLRA, but fulfills the
12 intent of Congress to encourage institutional investors to serve as lead plaintiffs in
13 class actions brought pursuant to federal securities laws. For the reasons set forth
14 below, the Bakery Pension Funds respectfully request that this Court grant their
15 motion for consolidation of all Related Actions, appointment as Lead Plaintiffs and
16 approval of their selection of Lead Counsel and Liaison Counsel.

17 **II. THE BAKERY PENSION FUNDS**

18 The Bakery Pension Funds are multiemployer, jointly administered Taft
19 Hartley Trust Funds organized pursuant to the requirements of Section 302(c)(5) of
20 the National Labor Relations Act of 1947. See Complaint ¶ 13.³ Each Fund
21 provides a defined benefit pension plan to over 1,000 active, retired and deferred

22 ¹ See Section 21D(a)(3)(B) of the Securities Exchange Act of 1934, 15 U.S.C. §
23 78u-4(a)(3)(B), as amended by the Private Securities Litigation Reform Act of
24 1995, Pub. L. No. 104-67, 109 Stat. 737 (1995) (the "PSLRA").

25 ² The present motion is being filed in the *Bakshi* action as the first filed case. As
26 indicated herein, the Bakery Pension Funds also filed a separate Complaint on
27 October 12, 2006.

28 ³ All paragraph references herein relate to the Complaint filed by the Bakery
Pension Funds on October 12, 2006.

1 vested participants. *Id.* Plaintiff Minnesota Bakers Union Pension Fund, with
2 assets of approximately \$140 million, and Plaintiff Twin Cities Baker Drivers
3 Pension Fund, with assets of approximately \$70 million, are located in Eagan, MN.
4 *Id.* Plaintiff Bakers Local No. 433, with assets of approximately \$60 million, is
5 located in South Sioux City, NE. *Id.*

6 The Bakery Pension Funds have much more in common than providing
7 pension benefits to those associated with bakery-related occupations. The Funds
8 share the same investment advisors, investment managers and general counsel. The
9 Funds also have some common actuaries, accountants, administrators and trustees.
10 The Bakery Pension Funds' commonalities – including their significant financial
11 interests in the litigation – render their group the most qualified to serve as Lead
12 Plaintiffs.⁴ The Bakery Pension Funds' cumulative losses on the securities they
13 purchased during the proposed Class Period have been calculated to be
14 approximately \$188,632.00 (Minnesota Bakers Union Pension Fund – \$105,412.00;
15 Twin Cities Bakery Drivers Pension Fund – \$49,932.00; Bakers Local No. 433
16 Pension Fund – \$33,288.00). *See* October 12, 2006 Declaration of Bryan L.
17 Crawford in Support of Motion to Consolidate Related Actions, Appoint Lead
18 Plaintiffs and Approve Selection of Lead Counsel (“Crawford Decl.”), filed
19 herewith, at ¶ 3.

21
22 ⁴ *See* H.R. Rep. No. 104-369 at 32 (1995), reprinted in 1996 U.S.C.C.A.N. 730
23 (noting that the House Conference Report on the PSLRA recognized the lead
24 plaintiff provisions were “intended to encourage the most capable *representatives*
25 of the plaintiff class to participate in class action litigation and to exercise
26 supervision and control of the lawyers for the class.” (emphasis added). *See also In*
27 *re Cable & Wireless, PLC, Sec. Litig.*, 217 F.R.D. 372, 376 (E.D. Va. 2003)
28 (appointing more than one lead plaintiff); *In re Oxford Health Plans, Inc., Sec.*
Litig., 182 F.R.D. 42, 43-44 (S.D.N.Y. 1998) (finding that a lead plaintiff group
made an effective monitor of counsel’s performance, and therefore satisfied the
requirements of the PSLRA).

1 **III. STATEMENT OF THE FACTS**

2 This is a securities class action on behalf of all persons or entities who
3 purchased or otherwise acquired publicly traded securities of Defendant Broadcom
4 Corporation (“Broadcom” or the “Company”) between July 21, 2005 and July 13,
5 2006 (the “Class Period”) and were damaged thereby (the “Class”). It is brought
6 against Defendants for violations of the Securities Exchange Act of 1934 (the
7 “Exchange Act”). ¶ 1.

8 Broadcom is a global leader in semiconductors for wired and wireless
9 communications. The Company’s products enable the delivery of voice, video,
10 data and multimedia to and throughout the home, the office and the mobile
11 environment. Broadcom, with annual revenue of more than \$2.5 billion, is one of
12 the world’s largest fabless semiconductor companies. ¶ 2.

13 During the Class Period, Defendants represented to investors that Broadcom
14 had met or exceeded earnings guidance, as well as achieved record revenues and
15 profits due to the efforts of the Company’s officers and employees. Defendants
16 also touted the veracity of Broadcom’s financial statements, which were
17 purportedly prepared in accordance with Generally Accepted Accounting Principles
18 (“GAAP”) and subject to the Company’s internal operational and financial controls.
19 ¶ 3. Defendants’ representations regarding Broadcom’s performance and the
20 accuracy of the Company’s financial statements, however, were simply not true.
21 Defendants, in misrepresenting Company performance and financial controls,
22 published materially false and misleading statements which they knew were false
23 and materially misleading at the time of such publication, or recklessly disregarded
24 whether the statements were false and materially misleading at the time of such
25 publication, and which omitted material information. Defendants’ statements, in
26 light of such omissions, were materially false and misleading. ¶ 4.

27 Defendants Henry Samueli, Scott A. McGregor, William J. Ruehle, and
28 Bruce E. Kiddoo (collectively, “the Individual Defendants”) had a material role in

1 drafting, reviewing and/or disseminating the false and misleading statements and
2 information, were aware, or recklessly disregarded, that false and misleading
3 statements were being issued regarding the Company, and approved or ratified
4 these statements, in violation of the federal securities laws. Each of the Individual
5 Defendants engaged in the unlawful practice of selling their Company stock while
6 in possession of undisclosed adverse information about Broadcom. ¶ 21.

7 Unbeknownst to investors, Broadcom had engaged in the improper
8 “backdating” of billions of dollars of stock options which had been granted to
9 Company officers, directors and employees throughout the Class Period.
10 Backdating occurs when the date an option was granted is retroactively changed to
11 reflect a date when the stock was trading at a lower price – or a date that
12 immediately precedes a significant increase in price. The practice of backdating,
13 contrary to law, GAAP, and even Broadcom’s stock option plans, has been likened
14 to the practice of betting on a race *after* the race is over. Backdating typically
15 results in (a) a transfer of company profits to the options grantee; (b) undisclosed
16 tax liabilities, underreported expenses, and false financial statements; and (c) a
17 violation of GAAP. ¶ 5.

18 The ramifications of such backdating practices are often substantial and far
19 reaching. Such is the case with Broadcom where, following the close of the Class
20 Period, Defendants were forced to disclose the following to investors:

- 21 • The Company’s Class Period financial performance, including
22 reported earnings, was not purely the result of the concerted efforts of
23 management and employees.
- 24 • Defendants had materially overstated Broadcom’s financial health by
25 under-reporting the Company’s actual compensation expenses during
26 the Class Period.
- 27 • The Company had incurred undisclosed tax liabilities during the
28 Class Period.

- 1 • The Company failed to properly record the actual date options were
- 2 granted to the Company's officers and employees.
- 3 • The Company's financial statements were neither accurate nor
- 4 prepared in accordance with GAAP and SEC regulations.
- 5 • The Company would need to restate its financial statements over an
- 6 8-year period (1998-2006), in an amount to exceed \$1.5 billion. ¶ 6.
- 7 Defendants' disclosures had a dramatic impact on the price of Broadcom's shares.
- 8 After trading at slightly above \$40.00 per share in mid-May of 2006, Broadcom's
- 9 share price plunged approximately 30% – to close at \$27.89 per share on July 13,
- 10 2006. Consequently, Plaintiffs and Class members sustained significant financial
- 11 harm. ¶ 7.

12 **IV. ARGUMENT**

13 **A. The Related Actions Should be Consolidated.**

14 The PSLRA provides that “[i]f more than one action on behalf of a class

15 asserting substantially the same claim or claims arising under this Chapter has been

16 filed, the court shall not make the determination” of the most adequate plaintiff

17 “until after the decision on the motion to consolidate is rendered.” 15 U.S.C. §

18 78u-4(a)(3)(B)(ii); 15 U.S.C. 77z-1(a)(3)(B)(ii). Thereafter, the court “shall

19 appoint the most adequate plaintiff as lead plaintiff for the consolidated actions.”

20 *Id.* Pursuant to Rule 42(a) of the Federal Rules of Civil Procedure, consolidation is

21 appropriate when the actions involve common questions of law or fact. *See* Fed.

22 R. Civ. P. 42(a); *Siegall v. Tibco Software, Inc., Sec. Litig.*, No. C 05-2146 SBA,

23 2006 WL 1050173, at *3 (N.D. Cal. Feb. 24, 2006) (consolidating securities actions

24 in light of the common questions of law or fact, and in the interests of avoiding

25 unnecessary costs or delays).

26 The Bakery Pension Funds are aware of one other Rule 10b-5 securities fraud

27 class action, *Bakshi v. Samueli, et al.*, 2:06-CV-05036-R-CW, pending against

28 Defendants in this District. *See* Crawford Decl. at ¶ 2. That action relates to the

1 same series of false and misleading statements and omissions, made and/or
2 approved by the same Defendants, concerning Broadcom's backdating of stock
3 option grants alleged here. All documents to be reviewed and testimony to be taken
4 relating to Defendants' allegedly false and misleading statements and omissions
5 will be identical in both actions. In light of these facts, consolidation is clearly
6 appropriate and in the interest of judicial economy. *See City of Harper Woods*
7 *Employees Retirement System v. AXT, Inc.*, No. C 04-04362 MJJ, 2005 WL
8 318813, at *3 (N.D. Cal. Feb. 7, 2005) (ordering consolidation of securities class
9 actions which "would expedite pretrial proceedings and reduce case duplication,
10 thereby conserving judicial resources").

11 **B. The Bakery Pension Funds are the Most Adequate Plaintiffs**
12 **Under the Exchange Act.**

13 Section 21D of the Exchange Act, as amended, sets forth a detailed
14 procedure for the selection of the lead plaintiff to oversee class actions brought
15 under the federal securities laws. Specifically, Section 21D(a)(3)(B) (i) of the
16 Exchange Act directs the Court to consider any motions by purported class
17 members to serve as lead plaintiff. Additionally, the Exchange Act contains a
18 presumption that the "most adequate plaintiff" to serve as lead plaintiff is the
19 person or group of persons that:

20 (aa) has either filed the complaint or made a motion in response to a
21 notice . . .;

22 (bb) in the determination of the court, has the largest financial interest
23 in the relief sought by the class; and

24 (cc) otherwise satisfies the requirements of Rule 23 of the Federal
25 Rules of Civil Procedure

26 Section 21D(a)(3)(B) (iii)(I).

27 The Bakery Pension Funds satisfy all the requirements of Section
28 21D(a)(3)(B) i). The Funds have filed a Complaint against Broadcom, and a
motion to serve as Lead Plaintiffs. Attached to their Complaint is a Certification

1 from the Bakery Pension Funds, complying with all the requirements of Section
2 21D(a)(2)(A). *See* Crawford Decl., Ex. A. The Bakery Pension Funds have a
3 significant financial interest in the outcome of this litigation, such that they will
4 actively represent the interests of the Class. Finally, because the Bakery Pension
5 Funds otherwise meet the requirements of Rule 23, they should be appointed Lead
6 Plaintiffs.

7 **1. The Bakery Pension Funds Have filed a Complaint and**
8 **Responded Timely to the Notice for Appointment of Lead**
9 **Plaintiff.**

10 On October 12, 2006, the Bakery Pension Funds filed a class action
11 Complaint against Defendants. Additionally, in response to the statutory notice
12 issued on August 13, 2006 by counsel for the first-filed case, the Bakery Pension
13 Funds filed a motion to be appointed Lead Plaintiffs. Thus, the Bakery Pension
14 Funds have satisfied the first prong of Section 21D(a)(3)(B) (i).

15 **2. The Bakery Pension Funds Have a Significant Financial**
16 **Interest in the Outcome of this Litigation.**

17 During the Class Period, the Bakery Pension Funds purchased Broadcom
18 securities at artificially inflated prices. The Funds purchased thousands of shares of
19 Broadcom's stock during the Class Period and have sustained approximately
20 \$188,632.00 in recoverable losses. *See* Crawford Decl. at ¶ 3, Ex. A. Accordingly,
21 the Bakery Pension Funds satisfy the PSLRA prerequisites for appointment as Lead
22 Plaintiffs pursuant to Section 21D(a)(3)(B).

23 The "institutional investor" status of the Bakery Pension Funds enhances the
24 presumption that they are the most adequate plaintiffs. The PSLRA was designed
25 to encourage the participation of institutional investors, such as the Funds, in
26 securities class action litigation. *See In re Cavanaugh*, 306 F.3d 726, 737 (9th Cir.
27 2002) (explaining that Congress sought to encourage the active involvement of
28 institutional investors); *In re Critical Path, Inc. Sec. Litig.*, 156 F. Supp. 2d 1102,
1113 (N.D. Cal. 2001) (noting that "Congress has endeavored to ensure that the

1 lead plaintiff will be . . . an institutional investor skilled in the practice of the
2 securities industry, capable of overseeing the conduct of the litigation.”); *In re*
3 *Network Associates, Inc., Sec. Litig.*, 76 F. Supp. 2d 1017, 1023 (N.D. Cal 1999)
4 (holding that the PSLRA intended to ensure that institutional investors would
5 control the litigation); *Greebel v. FTP Software, Inc.*, 939 F. Supp. 57, 63 (D. Mass.
6 1996); *Gluck v. Cellstar Corp.*, 976 F. Supp. 542, 548 (N.D. Tex. 1997) (stating
7 that “[t]hrough the PSLRA, Congress has unequivocally expressed its preference
8 for securities fraud litigation to be directed by large institutional investors.”)

9 Pension funds are the preferred lead plaintiff:

10 The Conference Committee seeks to increase the likelihood that
11 institutional investors will serve as lead plaintiffs by requiring courts
12 to presume that the member of the purported class with the largest
13 financial stake in the relief sought is the “most adequate plaintiff.”

14 * * *

15 The Conference Committee believes . . . in many cases the
16 beneficiaries of pension Funds – small investors – ultimately have the
17 greatest stake in the outcome of the lawsuits. Cumulatively, these
18 small investors represent a single large investor interest. Institutional
19 investors and other class members with large amounts at stake will
20 represent the interests of the plaintiff class more effectively than class
members with small amounts at stake.

21 H.R. Rep. No. 104-369, 104th Cong. 1st Sess. at 61 (1995).⁵ Here, the Bakery
22 Pension Funds’ roles as Lead Plaintiffs will clearly benefit the Class and assist the
23 Court, consistent with the legislative intent underlying the Reform Act.

24
25 ⁵ The Senate Committee Report states that “[t]he Committee believes that
26 increasing the role of institutional investors in class actions will ultimately benefit
27 the class and assist the courts.” 1995 United States Code Congressional and
28 *Administrative News*, 104th Congress, 1st Sess. 1995 (“USCCAN”) at 690. *See*
also 1995 USCCAN at 733 (recognizing that “[i]nstitutional investors and other

1 Further, the Bakery Pension Funds are qualified to represent the Class. They
2 have signed and filed Certifications attesting that they have reviewed the Complaint
3 and are willing to serve as Lead Plaintiffs on behalf of the Class. *See* Crawford
4 Decl., Ex. A. In addition, the Bakery Pension Funds have selected counsel highly
5 experienced in prosecuting securities class actions to represent them.⁶ Therefore,
6 the Bakery Pension Funds satisfy this requirement for their appointment as Lead
7 Plaintiffs pursuant to Section 21D(a)(3)(B).

8 **3. The Bakery Pension Funds Satisfy the Requirements of Rule**
9 **23 of the Federal Rules of Civil Procedure.**

10 Section 21D(a)(3)(B) (iii)(I) (cc) further provides that, in addition to
11 possessing the largest financial interest in the outcome of the litigation, the lead
12 plaintiff must also “otherwise satisfy the requirements of Rule 23 of the Federal
13 Rules of Civil Procedure.” Rule 23(a) provides that a party may serve as a class
14 representative if the following four requirements are satisfied:

- 15 (1) the class is so numerous that joinder of all members is
16 impracticable, (2) there are questions of law or fact common to the
17 class, (3) the claims or defenses of the representative parties are typical
18 of the claims or defenses of the class, and (4) the representative parties
19 will fairly and adequately protect the interests of the class.

20 *See* Fed. R. Civ. P. 23(a).

21 Of the four prerequisites to class certification, only two—typicality and
22 adequacy—enter into any consideration of the “most adequate plaintiff.” Section
23 21D(a)(3)(B) (iii)(II) provides that the presumption in favor of the most adequate
24 plaintiff may be rebutted only upon proof that the proposed plaintiff:

25
26
27 class members with large amounts at stake will represent the interests of the
28 plaintiff class more effectively than class members with small amounts at stake.”)

⁶ *See infra* at pp. 12-14; Crawford Decl., Ex. B.

- 1 (aa) will not fairly and adequately protect the interest of the class; or
2 (bb) is subject to unique defenses that render such plaintiff incapable
3 of adequately representing the class.

4 *Id.* Consequently, in deciding a motion to serve as lead plaintiff, inquiry should be
5 limited to the typicality and adequacy prongs of Rule 23 (a).

6 **a. The Bakery Pension Funds' Claims are Typical of the**
7 **Claims of the Class.**

8 The Bakery Pension Funds' claims are typical of the claims of the Class.
9 Typicality is established if the claims of the representative plaintiff arise from the
10 same events or course of conduct and are based on the same legal theory, as they
11 are here. *Armstrong v. Davis*, 275 F.3d 849, 869 (9th Cir. 2001); *Hanon v.*
12 *Dataproducts Corp.*, 976 F.2d 497 (9th Cir. 1992). Furthermore, typicality will not
13 be destroyed by factual variations. *See, e.g., In re Heritage Bond Litig.*, No. MDL
14 02-ML-1475 DT, 2004 WL 1638201, at *7 (C.D. Cal. Jul. 12, 2004); *In re Alco*
15 *Int'l Group, Inc. Sec. Litig.*, 158 F.R.D. 152, 154 (S.D. Cal. 1994); *In re United*
16 *Energy Corp. Solar Power Modules Tax Shelter Inv. Sec. Litig.*, 122 F.R.D. 251,
17 253 (C.D. Cal. 1988).

18 The claims asserted by the Bakery Pension Funds are typical of the claims of
19 all Class members. The Bakery Pension Funds, and all members of the Class,
20 allege that Defendants violated the Exchange Act by publicly disseminating a series
21 of false and misleading statements concerning Broadcom's financial condition. The
22 Bakery Pension Funds, like all members of the Class, purchased Broadcom stock at
23 prices inflated by Defendants' misrepresentations and omissions and were damaged
24 thereby. Typicality is satisfied because the claims asserted by the Bakery Pension
25 Funds arise from the same event or course of conduct giving rise to the claims of
26 other Class members, and are based on the same legal theory.

1 **b. The Bakery Pension Funds Will Fairly and**
2 **Adequately Represent the Class.**

3 Under Fed. R. Civ. P 23(a)(4), courts have consistently applied a two-prong
4 test to assess the adequacy of representation: (1) whether the named plaintiffs have
5 interests antagonistic to those of the class; and (2) whether the plaintiffs' attorneys
6 are qualified to conduct the litigation. *See Rutherford v. City of Cleveland*, 137
7 F.3d 905, 909 (6th Cir. 1998) (stating two factors in assessing adequacy under Rule
8 23(a)(4)). The Bakery Pension Funds satisfy this test.

9 First, the interests of the Bakery Pension Funds are clearly aligned with
10 members of the Class, and there is no evidence of any antagonism between them.
11 As detailed above, the Bakery Pension Funds shares substantially similar questions
12 of law and fact with the members of the Class and their claims are typical to those
13 of Class members.

14 Second, MSBI has selected the experienced and qualified law firm of Heins
15 Mills. As detailed below, Heins Mills devotes a significant part of their practice to
16 the prosecution of federal securities fraud class action lawsuits and have
17 successfully represented institutional investor clients and other class representatives
18 in major class actions. *See infra* at pp. 12-14; Crawford Decl., Ex. B. Further,
19 having suffered substantial losses of hard-earned retirement money, the Bakery
20 Pension Funds will advocate zealously on behalf of the Class.

21 In sum, the close alignment of interests between the Bakery Pension Funds
22 and other Class members, and the Bakery Pension Funds' strong desire to prosecute
23 these actions on behalf of the Class, provide ample reason to grant their motion to
24 serve as Lead Plaintiffs. Therefore, the Bakery Pension Funds satisfy the
25 requirements of Rule 23 and all of the PSLRA's prerequisites for appointment as
26 Lead Plaintiffs in this action.

1 **C. The Court Should Approve the Bakery Pension Funds' Choice of**
2 **Counsel.**

3 **1. Firm Background and Qualifications**

4 The Bakery Pension Funds have retained Heins Mills, a law firm experienced
5 in handling complex securities fraud class action cases. Heins Mills' attorneys have
6 well over 100 years of class action litigation experience in the United States District
7 Courts – from coast to coast. See Crawford Decl, Ex. B. Heins Mills has
8 successfully prosecuted numerous class actions, including securities fraud, antitrust
9 and consumer class actions. See, e.g., *In re AOL Time Warner, Inc. Securities and*
10 *ERISA Litigation*, MDL No. 1500, 02 Civ. 5575 (S.D.N.Y.); *In re Broadcom*
11 *Corporation Securities Litigation*, SA CV 01-0275 (C.D. Cal.); *In re Monosodium*
12 *Glutamate Antitrust Litigation*, MDL 00-1328 (D. Minn.); *In re Mercury Finance*
13 *Company Securities Litigation*, 97-CV-3035 (N.D. Ill.). The firm has served as
14 litigation counsel for large institutional investors,⁷ and as litigation counsel for
15 corporate clients, including Honeywell Corporation, ITT Commercial Credit, West
16 Publishing, First Bank System, Intermedics Corporation, Fujitsu Companies and the
17 Minnesota Automobile Dealers Association.

18 **2. Securities Class Action Experience *Specific to Broadcom***
19 **Praised by the Courts of the Central District of California**

20 As sole lead counsel in *In re Broadcom Corp. Securities Litigation*, SA CV
21 01-0275 (C.D. Cal.) ("*Broadcom*"), the firm achieved a \$150 million settlement on
22 behalf of the Minnesota State Board of Investment and a class of purchasers of
23 *Broadcom* securities. In *Broadcom*, the plaintiffs alleged that Defendants devised
24 and implemented an elaborate scheme to fraudulently overstate *Broadcom*'s

25 _____
26 ⁷ These include the Minnesota State Board of Investment, Utah State Retirement
27 Board, the Teachers' Retirement System of Alabama, the Employees' Retirement
28 System of Alabama, the Judicial Retirement Fund of Alabama, and the Public
Employees' Retirement Association of Colorado.

1 revenue.⁸ Heins Mills, in litigating the hard-fought complex securities fraud matter
2 for over four years, gained incomparable insight into, and knowledge of,
3 Broadcom's business operations, accounting practices, and litigation strategy.
4 Furthermore, it should not go unmentioned that the present action involves most of
5 the same defendants⁹ as the earlier *Broadcom* case, as well as the same defense
6 counsel (Irell & Manella LLP).

7 When the *Broadcom* settlement was approved by the court in September
8 2005, it ranked as one of the 25 largest in history. In granting preliminary approval
9 of the settlement, the Honorable Gary L. Taylor (Ret.) specifically commended the
10 efforts of Heins Mills:

11 I know that there is an *extremely high level of lawyering* that has been
12 taken place on both sides in this case. The case involves some very
13 interesting, very novel issues. Everybody has done a very hard job, a
14 very hardworking job, and has approached it with a *great deal of*
15 *professionalism and a great deal of experience and a great deal of*
16 *legal knowledge.*

17 * * *

18 This was a complex case. A great deal of hard work went into it over
19 quite a period of time. Some fascinating motions and *a great deal of*
20 *good lawyer work.*

21 *See Crawford Decl., Ex. C (emphasis added).* The Honorable Dickran Tevrizian
22 echoed these sentiments when he granted final approval of the *Broadcom*
23 settlement, remarking that the recovery for the class "*is an exceptional result given*

24
25 ⁸ Specifically, the plaintiffs in *Broadcom* alleged that the Company concealed
26 huge price discounts to customers in the form of warrants to buy Broadcom stock
upon satisfaction of purchase requirements.

27 ⁹ *Broadcom*, Henry J. Samueli, and William J. Ruehle were all named
28 defendants in *Broadcom*.

1 *the complexity of the case, and despite keenly contested and very complex facts . . .*
2 Class Counsel's ability to obtain a favorable settlement despite formidable
3 opposition *confirms their immense skill.*" *Id.*, Ex. D. In summary, based on the
4 foregoing, no law firm is better prepared or more qualified to zealously and
5 effectively represent the Class than Heins Mills.¹⁰

6 3. Recognition by Courts in Other Noteworthy Cases

7 Heins Mills' status as a leading class action securities fraud litigation law
8 firm is reflected in the outstanding results it has achieved for its institutional clients,
9 as well as the praise it has received from judges presiding over its cases. For
10 example, as sole lead counsel in *In re AOL Time Warner, Inc. Securities Litig.*, the
11 firm recently obtained a \$2.65 billion class settlement on behalf of the Minnesota
12 State Board of Investment and other purchasers of America Online and Time
13 Warner securities. As part of the settlement, the firm also recovered \$100 million
14 from Ernst & Young, which audited the financial statements at issue. Approved by
15 the court earlier this year, the 2005 settlement is one of the five largest securities
16 fraud class settlements in history and the second-largest ever paid by a securities
17 issuer. In granting final approval of the Settlement, the Honorable Shirley Wohl
18 Kram praised the firm's "exceptional lawyering" and noted that she "continues to
19 be impressed with the *quality of representation* provided by [Heins Mills], its
20 prosecution of the lawsuit, and its negotiation of the Settlement." *See Crawford*
21 *Decl.*, Ex. E (emphasis added).

22 In sum, Heins Mills has the demonstrated experience and skill to serve both
23 the Bakery Pension Funds and the Class.

24
25
26 ¹⁰ The law firm of Susman Godfrey, L.L.P. would serve as the Bakery Pension
27 Funds' Liaison Counsel. Susman Godfrey, L.L.P., like Heins Mills, has significant
28 experience in handling complex class action securities cases. *See Crawford Decl.*,
Ex. F.

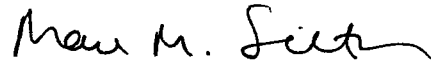
1 **V. CONCLUSION**

2 For the foregoing reasons, the Bakery Pension Funds' motion should be
3 granted in its entirety.

4
5 Dated: October 12, 2006

Respectfully submitted,

6
7 **SUSMAN GODFREY L.L.P.**

8
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10

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23 *Minnesota Bakers Union Pension Fund, et*
al., v. Broadcom Corporation, et al.

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PROOF OF SERVICE

I, the undersigned, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1901 Avenue of the Stars, Suite 950, Los Angeles, California 90067-6029.

On October 12, 2006, I served the foregoing document(s) described as follows:

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO CONSOLIDATE RELATED ACTIONS, APPOINT LEAD PLAINTIFFS, AND APPROVE SELECTION OF LEAD COUNSEL

on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as stated on the attached service list, as follows:

 BY MAIL: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

XX BY PERSONAL SERVICE:
I caused to be delivered such envelope by hand to the offices of the addressee.

XX BY FEDERAL EXPRESS OR OVERNIGHT COURIER

 BY TELECOPIER
I served by facsimile as indicated on the attached service list.

 BY ELECTRONIC MAIL
I caused said documents to be prepared in portable document format (PDF) for e-mailing and served by electronic mail as indicated on the attached service list.

Executed on October 12, 2006, at Los Angeles, California

XX (Federal) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Helen Danielson
(Type or Print Name)

Helen Danielson
(Signature)

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