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27 **UNITED STATES DISTRICT COURT**
28 **CENTRAL DISTRICT OF CALIFORNIA**
WESTERN DIVISION

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

Plaintiff

v.

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

Defendants

Case No. CV06-05036 R (CWx)
(Related to CV 06-00663 R (CW) and
CV06-0771 R (CW))

CLASS ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION OF THE ITAIPU PENSION
FUND; TO BE APPOINTED LEAD
PLAINTIFF; TO CONSOLIDATE
RELATED CASES AND TO
APPROVE PROPOSED LEAD
PLAINTIFF'S CHOICE OF
COUNSEL**

Date: November 20, 2006
Place: Courtroom 8
Time: 10:00 a.m.

Hon. Manuel L. Real

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2 **I. INTRODUCTION**

3 Caja Paraguaya de Jubilaciones y Pensiones del Personal de la Itaipú
4 Binacional (“Itaipu Pension Fund”) hereby moves to be appointed Lead Plaintiff in
5 this action against Broadcom Corporation (“Broadcom” or the “Company”) pursuant
6 to Section 21D(a)(3)(B) of the Securities Exchange Act of 1934 (“Exchange Act”), 15
7 U.S.C. § 78u-4(a)(3)(B), as amended by the Private Securities Litigation Reform Act
8 of 1995 (“PSLRA”), and for approval of its selection of the law firms Kahn Gauthier
9 Swick, LLC (“KGS”) and Climaco, Lefkowitz, Peca, Wilcox & Garofoli, Co., LPA
10 (“Climaco”) as Lead Counsel and Schubert & Reed LLP as Liaison Counsel in this
11 action.

12 The Itaipu Pension Fund is precisely the type of lead plaintiff the framers of the
13 PSLRA encouraged to participate in securities class actions by enacting the PSLRA’s
14 lead plaintiff provision. The legislative history of the PSLRA is summarized in the
15 Statement of Managers, which noted the PSLRA was intended to increase the
16 likelihood that sophisticated investors who have a significant interest in the
17 underlying action, will serve as lead plaintiffs because, among other reasons,
18 sophisticated investors with large amounts at stake “will represent the interest of the
19 plaintiff class more effectively than class members with small amounts at stake.”
20 House Conference Report No. 104-369, 104th Cong. 1st Sess. At 34 (1995), reprinted
21 at 1995 USCCAN 730, 733. The Itaipu Pension Fund is the type of sophisticated
22 investor Congress sought to lead securities class actions through enactment of the
23 PSLRA.¹

24
25
26 ¹ If necessary, The Itaipu Pension Fund also stands ready, willing and able to present a further
27 detailed account of its specific attributes and abilities. The Itaipu Pension Fund, located in
28 Asuncion, Paraguay, is a pension fund whose members are Paraguayan employees of the Itaipu
Binacional Hydroelectric Plant, the largest hydroelectric plant in the world.

1 The Itaipu Pension Fund fully understands its duties and responsibilities to the
2 class, and is willing and able to oversee the vigorous prosecution of this action. As
3 described in the Certification attached to the Darsky Declaration at Ex. A, The Itaipu
4 Pension Fund has suffered a loss of \$798,550.65 as a result of its purchase and/or
5 acquisition of 43,956 shares of Broadcom securities during the period July 21, 2005
6 and July 13, 2006, inclusive (tentatively, the "Class Period"). To the best of its
7 knowledge, The Itaipu Pension Fund has therefore sustained the largest loss of any
8 qualified investor seeking to be appointed as Lead Plaintiff. In addition to evidencing
9 the largest financial interest in the outcome of this litigation, The Itaipu Pension
10 Fund's Certification demonstrates its intent to serve as Lead Plaintiff in this litigation,
11 including its cognizance of the duties of serving in that role.² Moreover, The Itaipu
12 Pension Fund satisfies both the applicable requirements of the PSLRA and Rule 23 of
13 the Federal Rules of Civil Procedure ("Rule 23") and is presumptively the "most
14 adequate plaintiff." The Itaipu Pension Fund respectfully submits that it should be
15 appointed as Lead Plaintiff in this action, and that this Honorable Court should
16 approve its selection of the law firms KGS and Climaco firms as Lead Counsel and
17 SR as Liaison Counsel in this action.

18 II. PROCEDURAL HISTORY

19
20 This case was filed on August 13, 2006, by Sonam Bakshi, individually
21 and on behalf of all persons or entities that purchased or otherwise acquired
22 Broadcom securities during the relevant Class Period. The gravamen of the complaint
23 is Defendants' violation of Sections 10(b) and 20(a) of the Exchange Act and SEC
24

25 ² The relevant federal securities laws specifically authorize any class member seeking to be
26 appointed lead plaintiff to either file a complaint or move for appointment as lead plaintiff. *See*, 15
27 U.S.C. § 78u-4(a)(3)(B)(iii). A copy of The Itaipu Pension Fund's certification of its transactions in
28 Broadcom's securities during the Class Period is attached as Exhibit A to the Darsky Decl. that has
been filed in support of this motion.

1 However, contrary to the Company's public disclosures, defendants knew, or
2 deliberately disregarded, information concerning the veracity and completeness of
3 these disclosures. Unbeknownst to investors, throughout the Class Period, Broadcom
4 had engaged in the illegal and improper "backdating" of billions of dollars of stock
5 options that were then granted to the senior officers and directors of the Company.
6 The illegal and improper backdating of options involves the granting of options and
7 retroactively assigning them a grant date - - one that usually coincides with the yearly
8 trading low in the price of a company's stock, or that immediately proceeds a
9 significant increase in the price of that company's shares. The illegal backdating of
10 options transfers profits from a company directly into the hands of the options
11 grantee, it results in undisclosed tax liabilities, it raises true compensation expenses
12 and it also results in the falsification of financial statements. Under no circumstances
13 does the undisclosed backdating of options satisfy generally accepted accounting
14 principles (GAAP).

15 Following the close of the Class Period, investors were shocked when
16 defendants announced a \$750 million restatement - increased thereafter to \$1.5 billion
17 - thereby evidencing that Broadcom had manipulated its financial results through the
18 improper and illegal backdating of stock options; had misrepresented that its financial
19 statements and reports were prepared in accordance with GAAP and SEC rules; and
20 lacked any reasonable basis to claim that the Company was operating in accordance to
21 plan or that it could achieve guidance sponsored and/or endorsed by defendants.

22 Defendants were motivated to and did conceal the true operational and financial
23 condition of Broadcom, and materially misrepresented and failed to disclose the
24 conditions that were adversely affecting Broadcom throughout the Class Period,
25 because: (i) it deceived the investing public regarding Broadcom's business,
26 operations, management and the intrinsic value of Broadcom securities; (ii) it enabled
27 defendants to backdate billions of dollars in options granted to the senior officers and
28 directors of the Company; (iii) it enabled Broadcom insiders to sell tens of millions of

1 dollars of their privately held Broadcom shares while in possession of material
2 adverse non-public information about the Company; and (iv) it caused plaintiff and
3 other members of the Class to purchase Broadcom securities at artificially inflated
4 prices.

5
6 **IV. ARGUMENT**

7 **A. Any Subsequently Filed Related Actions Should Be Consolidated**

8
9 The PSLRA provides that the District Court shall not make the
10 determination of the most adequate plaintiff until “after the decision on the motion to
11 consolidate is rendered.” 15 U.S.C. §78u-4(a)(3)(B)(ii). Thereafter, the District
12 Court “shall appoint the most adequate plaintiff as lead plaintiff for the consolidated
13 actions.” *Id.*

14 Consolidation pursuant to Rule 42(a) is proper and routinely granted in
15 actions such as this, where there are common questions of law and fact. See *Yousefi*
16 *v. Lockheed Martin Corp.*, 70 F. Supp. 2d 1061, 1064 (C.D. Cal. 1999)³ Courts have
17 recognized that securities class actions, in particular, are ideally suited to
18 consolidation pursuant to Rule 42(a) because their unification expedites pretrial
19 proceedings, reduces case duplication, avoids contacting of the parties and witnesses
20 for inquiries in multiple proceedings, and minimizes the expenditure of time and
21 money by all persons concerned. See e.g., *Primavera Familienstiftung v. Askin*, 173
22 F.R.D. 115, 129 (S.D.N.Y. 1997). Indeed, “[i]n securities actions where the
23 complaints are based on the same ‘public statements and reports’ consolidation is
24 appropriate if there are common questions of law and fact” and the parties will not be

25 ³ Rule 42(a) of the Federal Rules of Civil Procedure allows this Court to order consolidation of
26 separate actions:

27 When actions involving a common question of law or fact are pending
28 before the court, it may order a joint hearing or trial of any or all of the
matters in issue in the actions; it may order all of the actions
consolidated; and it may make such orders concerning proceedings
therein as may tend to avoid unnecessary costs of delay.

1 prejudiced. *Garber v. Randell*, 477 F.2d 711, 714 (2d Cir. 1973); *Weltz v. Lee*, 199
2 F.R.D. 129, 131 (S.D.N.Y. 2001). Consolidating shareholder class actions
3 streamlines and simplifies pre-trial and discovery proceedings, including motions,
4 class action issues, clerical and administrative duties, and generally reduces the
5 confusion and delay that result from prosecuting related actions separately before two
6 or more judges. *Id.* See also *In re Olsten Corp. Securities Litigation*, 3 F.Supp.2d
7 286 (E.D.N.Y. 1998).

8 **B. The PSLRA Procedure For Lead Plaintiff Appointment Favors**
9 **Appointment of The Itaipu Pension Fund**

10 The selection of Lead Plaintiff in a securities class action is a determination
11 made by the Court as to which plaintiff is the most capable of adequately representing
12 the class. The Court:

13 (s)hall appoint as lead plaintiff the member or members of the purported
14 plaintiff class that the court determines to be *most capable of adequately*
15 *representing* the interests of class members in accordance with this
16 subparagraph. 15 U.S.C. §78u-4(a)(3)(B)(i) (emphasis added).

17
18 The “most adequate plaintiff” assumes a rebuttable presumption that:

19
20 The most adequate plaintiff in any private action arising under this
21 subchapter is the person or group of persons that ---

22
23 (aa) has either filed the complaint or made a motion in response to
24 a notice under subparagraph (A)(i);

25
26 (bb) *in the determination of the court, has the largest financial interest*
27 *in the relief sought by the class; and*
28

1 (cc) otherwise satisfies the requirements of Rule 23 of the Federal
2 Rules of Civil Procedure. 15 U.S.C. §78u-4(a)(3)(B)(iii)(I) (emphasis
3 added).

4 Only by a showing that a Lead Plaintiff will not fairly and adequately represent
5 the class, or is subject to unique defenses that will render such plaintiff incapable of
6 adequately representing the class, will this presumption be overcome. 15 U.S.C. §78u-
7 4(a)(3)(B)(iii)(II).

8 Under this statutory test, The Itaipu Pension Fund is the “most adequate
9 plaintiff” and should be appointed as Lead Plaintiff on behalf of the proposed class.
10 The Itaipu Pension Fund is exactly the type of sophisticated and interested investor
11 with large losses that Congress intended to lead class action securities lawsuits. The
12 Itaipu Pension Fund has timely moved this Court for appointment as Lead Plaintiff in
13 accordance with the PSLRA and has the willingness, resources and expertise to obtain
14 excellent results for the class. Consequently, this Court should appoint The Itaipu
15 Pension Fund as Lead Plaintiff and approve its selection of KGS and Climaco as Lead
16 Counsel and SR as Liaison Counsel.

17
18 1. The Itaipu Pension Fund Has Complied With The PSLRA And
Should Be Appointed Lead Plaintiff

19 The Itaipu Pension Fund moves the Court to be appointed Lead Plaintiff
20 and has timely filed the instant motion to be appointed lead plaintiff within the 60-day
21 time period requirement. The plaintiff in the first filed action published notice on a
22 national business-oriented wire service, on August 13, 2006. Accordingly, The Itaipu
23 Pension Fund meets the requirement of 15 U.S.C. §78u-4(a)(3)(B)(iii)(I)(aa) and has
24 filed its motion by October 12, 2006.

25 Moreover, The Itaipu Pension Fund is a sophisticated investor that has
26 sustained a substantial loss from its investment in Broadcom securities and has shown
27 its willingness to represent the class by four of its authorized board members signing a
28 certification detailing the fund’s Broadcom transaction information during the Class

1 Period. *See* Darsky Decl. Ex. A. As demonstrated by this certification, The Itaipu
2 Pension Fund is prepared to consult with counsel on a regular basis, prior to every
3 major litigation event, and direct the course of the litigation, with the benefit of
4 counsel’s advice. In addition, The Itaipu Pension Fund has selected and retained
5 highly competent counsel to represent the Class with significant experience in
6 securities class action litigation. *See* Exhibit C to the Darsky Declaration.

7 2. The Itaipu Pension Fund Has The Largest Financial Interest of The
8 Plaintiffs Who Have Submitted Applications for Lead Plaintiff
9 And Is Otherwise Qualified To Serve as Lead Plaintiff In This
Action

10 As a result of its purchases of Broadcom securities throughout the Class Period
11 The Itaipu Pension Fund has suffered losses of \$797,363.84 using an average closing
12 price of \$27.36 per share between the dates of July 13, 2006 and October 11, 2006.
13 *See* Darsky Decl. Ex. A. The Itaipu Pension Fund believes it has the largest financial
14 interest in this class action compared to any other party moving for Lead Plaintiff.
15 The PSLRA provides that there is a rebuttable presumption that the “most adequate
16 plaintiff” is the plaintiff with the largest financial interest in the relief sought by the
17 class. 15 U.S.C. §78u-4(a)(3)(B)(iii)(I)(bb). “So long as the plaintiff with the largest
18 losses satisfies the adequacy requirements, he is entitled to lead plaintiff status...”
19 *Ferrari v. Gisch*, 225 F.R.D. 599, 602 (C.D. Cal. 2004) (*citing In re Cavanaugh*, 306
20 F.3d 726, 732 (9th Cir. 2002)). The Itaipu Pension Fund, therefore, is presumptively
21 the “most adequate plaintiff” pursuant to the PSLRA.

22 3. The Itaipu Pension Fund Satisfies The Requirements Of Rule 23

23
24 Section 21D(a)(3)(B)(iii)(I)(cc) of the Exchange Act, as amended by the
25 PSLRA, provides that the Lead Plaintiff must satisfy the typicality and adequacy
26 requirements of Fed.R.Civ.P. Rule 23(a). *Siegall v. Tibco Software, Inc.*, 2006 U.S.
27 Dist. LEXIS 26780, *15 (N.D. Cal., 2006) (“In the context of determining the
28 appropriate lead plaintiff, the requirements of ‘typicality’ and adequacy of
representation are the key factors.”). This Court’s analysis of any other requirements

1 of Rule 23 as it relates to class certification should be deferred until the Lead Plaintiff
2 moves for class certification. *Schrivver v. Impac. Mortg. Holdings, Inc.*, 2006 Dist.
3 LEXIS 40607, *16 (C.D. Cal., S. Div. 2006) (“At the lead plaintiff appointment stage,
4 the Rule 23 inquiry is not as searching as it would be on a motion for class
5 certification; the prospective lead plaintiff need only make a prima facie showing that
6 it meets the typicality and adequacy factors.”). As detailed below, The Itaipu Pension
7 Fund satisfies both the typicality and adequacy requirements of Rule 23(a), and
8 should therefore be appointed Lead Plaintiff in this action.

9 a. The Itaipu Pension Fund’s Claims Are Typical Of The Claims Of
10 All The Class Members

11 Under Rule 23(a)(3), typicality exists where “the claims...of the representative
12 parties” are “typical of the claims....of the class.” The typicality requirement of Rule
13 23 (a)(3) is satisfied when the representative plaintiffs' claims arise from the same
14 event or course of conduct that gives rise to claims of other class members, and when
15 the claims are based on the same legal theory. *See Crossen v. CV Therapeutics*, 2005
16 US Dist. LEXIS 41396, *13 (D.C. N.D. Cal., 2005). The requirement that the
17 proposed class representatives' claims be typical of the claims of the class does not
18 mean, however, that the claims must be identical. *See Hanlon v. Chrysler Corp.*, 150
19 F.3d 1011, 1020 (9th Cir. 1988).

20 In this case, the typicality requirement is met because The Itaipu Pension
21 Fund’s claims *are* identical to the claims of the other Class Members. The Itaipu
22 Pension Fund and all the members of the Class purchased Broadcom securities during
23 the Class Period when the stock prices were artificially inflated as a result of the
24 Defendants’ fraudulent misrepresentations and omissions, and thus, both The Itaipu
25 Pension Fund and the Class Members suffered damages as a result of these purchases.
26 Simply put, The Itaipu Pension Fund, like all the other Class Members, (1) purchased
27 Broadcom securities during the Class Period; (2) purchased Broadcom securities at
28 artificially inflated prices as a result of the Defendants’ misrepresentations and

1 omissions; and (3) suffered damages thereby. The Itaipu Pension Fund’s claims and
2 injuries “arise from the same event or course of conduct that [gave] rise to the claims
3 of other class members.” *Crossen*, at *13.

4 Moreover, The Itaipu Pension Fund is not subject to any unique or special
5 defenses. Thus, The Itaipu Pension Fund meets the typicality requirement of
6 Fed.R.Civ.P. Rule 23 because its claims are the same as the claims of the other Class
7 Members.

8 b. The Itaipu Pension Fund Will Adequately Represent The Interests
9 Of The Class

10 The Requirements of Rule 23(a)(4) relating to adequate representation are
11 satisfied “if (1) the class counsel is qualified, experienced, and generally able to
12 conduct the litigation; (2) the interests of the class are not antagonistic to one another;
13 and (3) the lead plaintiff has a “sufficient interest in the outcome of the case to ensure
14 vigorous advocacy.” *Miller v. Ventro Corp.*, 2001 U.S. Dist. LEXIS 26027, *44 (N.D.
15 Cal. 2001) (*citing Takeda v. Turbodyne Techs.*, 67 F.Supp. 2d 1129, 1132 (C.D. Cal.
16 1999)). As described below, The Itaipu Pension Fund will adequately represent the
17 interests of the class.

18 The Itaipu Pension Fund’s interests are clearly aligned with the members of the
19 Class because its claims are identical to the claims of the Class. There is no evidence
20 of antagonism between The fund’s interests and those of proposed Class Members.
21 Furthermore, The Itaipu Pension Fund has a significant, compelling interest in
22 prosecuting this action to a successful conclusion based upon the very large financial
23 loss it incurred as a result of the wrongful conduct alleged herein. This motivation,
24 combined with The Itaipu Pension Fund’s identical interest with the members of the
25 Class, clearly shows that The Itaipu Pension Fund will adequately and vigorously
26 pursue the interests of the Class. In addition, The Itaipu Pension Fund has selected
27 counsel that is highly experienced in prosecuting securities class actions such as this
28 one to represent the fund and the class.

1 In sum, because of The Itaipu Pension Fund’s common interests with the Class
2 Members, its clear motivation and ability to vigorously pursue this action, and its
3 competent counsel, the adequacy requirement of Fed.R.Civ.P. Rule 23(a) is met in
4 this case. Therefore, since The Itaipu Pension Fund not only meets both the typicality
5 and adequacy requirements of Fed.R.Civ.P. 23(a), and has sustained the largest
6 amount of losses at the hands of the Defendants, the fund is, in accordance with 15
7 U.S.C. §78u-4(a)(3)(B)(iii)(I), presumptively the most adequate plaintiff to lead this
8 action.⁴

9 **C. This Court Should Accept The Itaipu Pension Fund’s Selection of**
10 **Counsel**

11 The PSLRA vests authority in the Lead Plaintiff to select and retain counsel to
12 represent the class, subject to the Court’s approval. See U.S.C. §78u-4(a)(3)(B)(v).
13 Thus, this Court should not disturb the Lead Plaintiff’s choice of counsel unless
14 necessary to “protect the interests of the class.” 15 U.S.C. §78u-
15 4(a)(3)(B)(iii)(II)(aa).

16 The Itaipu Pension Fund has selected KGS and Climaco to serve as Lead
17 Counsel for the Class and SR to serve as Liaison Counsel. These firms have not only
18 prosecuted complex securities fraud actions, but have successfully prosecuted many
19 other types of complex cases. *See* Ex. C to Darsky Decl. This Court may be assured
20 that in the event that this motion is granted, the members of the class will receive the
21 highest caliber of legal representation.

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23
24
25 ⁴ The PSLRA clearly envisions a two-part test of a presumption of adequacy and a mechanism for
26 rebutting the presumption. 15 U.S.C. §78u-4(a)(3)(B)(iii)(I) and (II). The Itaipu Pension Fund
27 meets the presumption of adequacy. However, there have not been any submissions to the Court
28 which seek to rebut this presumption at this time. If any such submission can be made or is
submitted to the Court, The Itaipu Pension Fund would respectfully request the opportunity to
address them with the Court in both written and oral argument.

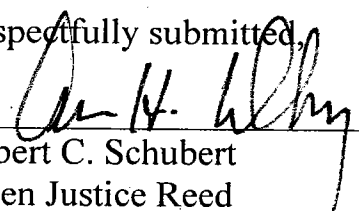
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V. CONCLUSION

For all of the foregoing reasons, The Itaipu Pension Fund respectfully requests that this Court: (1) consolidate all similar cases both existing and filed subsequently; (2) appoint The Itaipu Pension Fund to serve as Lead Plaintiff in this action; (3) approve The Itaipu Pension Fund's selection of Lead and Liaison Counsel for the Class; and (4) grant such other and further relief as the Court may deem just and proper.

Dated: October 12, 2006

Respectfully submitted,



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