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11 **Attorneys for Movant and**
12 **Proposed Lead Counsel for the Class**

13
14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**
16 **WESTERN DIVISION**
17

18 SONAM BAKSHI, Individually and
on Behalf of All Others Similarly
19 Situated,
20 Plaintiff,
21 vs.
22 HENRY SAMUELI, SCOTT A.
McGREGOR, WILLIAM J.
23 RUEHLE, BRUCE E. KIDDOO, and
BROADCOM CORPORATION,
24 Defendants.
25

CASE NO. CV06-5036 R (CWx)

CLASS ACTION

**MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
OF MOTION BY JUSTIN
SHENKAROW FOR
APPOINTMENT OF LEAD
PLAINTIFF AND LEAD
COUNSEL PURSUANT TO
SECTION 21D OF THE
SECURITIES EXCHANGE ACT
OF 1934**

DATE: November 6, 2006
TIME: 10:00 a.m.
JUDGE: Honorable Manuel L. Real
CTRM: 8

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1 Justin Shenkarow (hereinafter "Movant") respectfully submits his Motion for
2 Appointment of Lead Plaintiff and Lead Counsel Pursuant to Section 21D of the
3 Securities Exchange Act of 1934 (the "Motion").

4 I. INTRODUCTION

5 Presently pending in this District is a securities fraud class action against
6 Broadcom Corporation ("Broadcom" or the "Company") and certain of its officers
7 and directors. The action alleges a scheme and common course of conduct by
8 defendants to defraud investors in violation of §10(b) and Rule 10b-5 promulgated
9 thereunder, §14(a) and Rule 14a-9, and §20(a) of the Securities Exchange Act of
10 1934 (the "Exchange Act"). Pursuant to the Private Securities Litigation Reform Act
11 of 1995 ("PSLRA") (codified at 15 U.S.C. §78u-4), Movant respectfully submits his
12 memorandum in support of his Motion for appointment as Lead Plaintiff and
13 approval of his choice of Stull, Stull & Brody as Lead Counsel.

14 Movant acquired Broadcom securities between July 21, 2005 and July 13,
15 2006 (the "Class Period") and suffered damages as a result of defendants' violations
16 of the federal securities laws.¹ As is more fully alleged in the complaint, this action
17 arose from damages incurred by the Class as a result of a scheme and common
18 course of conduct by defendants which operated as a fraud and deceit on the Class
19 during the Class Period. Defendants' scheme included rendering false and
20 misleading statements and/or omissions regarding Broadcom's option grants to
21 certain Broadcom senior executives and those executives subsequent exercising of
22 said options from September 9, 1005 through May 31, 2006. Indeed, in contrast to

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24 ¹ The PSLRA specifically authorizes class members, regardless of whether
25 they have filed a complaint, to move for appointment of Lead Plaintiff. *See* 15
26 U.S.C. §78u-4 (a)(3)(B). Movant has a completed a sworn certification listing his
27 purchases of Broadcom stock and requesting that he be appointed Lead Plaintiff. *See*
28 Exhibit A to the Declaration of Patrice L. Bishop in Support of Motion by Justin
Shenkarow for Appointment of Lead Plaintiff and Lead Counsel Pursuant to Section
21D of The Securities Exchange Act of 1934 (hereinafter "Bishop Decl. Ex. ____").

1 the assertions made by defendants during relevant times herein, the options granted
2 to these senior executives were not granted at the fair market value on the day of the
3 grant. Instead, the options grants were backdated so that the executives paid a lower
4 price than the fair market price on the day of the grant, resulting in an instant profit
5 to the executives at the expense of the Company's shareholders. As a result, the
6 Company's financials, as reported on relevant 10-Ks and interim financial reports,
7 and filed with the Securities and Exchange Commission ("SEC"), were overstated.
8 Similarly, the information contained in the Company's Definitive Proxies was false
9 and misleading. These false and misleading statements were made in violation of
10 applicable Generally Accepted Accounting Principles ("GAAP") in effect during
11 times relevant herein and the Internal Revenue Code.

12 Movant believes he has the largest financial interest in the relief sought by the
13 Class. Accordingly, under the mandates of the PSLRA, Movant is presumed to be
14 the "most adequate Plaintiff." *See* Bishop Decl. Ex. B.

15 Section 21D of the Exchange Act, as amended by the PSLRA, sets forth the
16 procedure for the selection of Lead Plaintiff to oversee class actions brought under
17 the federal securities laws. In *In re Cavanaugh*, 306 F.3d 726 (9th Cir. 2002), the
18 Ninth Circuit outlined the procedures district courts are to follow when deciding who
19 will be appointed as Lead Plaintiff. As the Ninth Circuit noted, the PSLRA instructs
20 district courts to select as Lead Plaintiff the plaintiff "most capable of adequately
21 representing the interests of class members." *Id.* at 729, *citing* 15 U.S.C. § 78u-
22 4(a)(3)(B)(I). The "most capable" plaintiff - and hence the Lead Plaintiff - is the one
23 who has the greatest financial stake in the outcome of the case, so long as he or she
24 meets the requirements of Rule 23. *Id.*

25 The PSLRA provides a simple three-step process for identifying the lead
26 plaintiff. *Id.* The first step consists of publicizing the pendency of the action, the
27 claims made and the purported class period. 15 U.S.C. §78u-4(a)(3)(A). *Id.* The
28 first plaintiff to file an action covered by the Reform Act must post this notice "in a

1 widely circulated national business-oriented publication or wire service." 15 U.S.C.
2 §78u-4(a)(3)(A)(I). The notice must also state that "any member of the purported
3 class may move the court to serve as lead plaintiff." 15 U.S.C.
4 §78u-4(a)(3)(A)(i)(II).

5 In step two, the district court must consider the losses allegedly suffered by the
6 various plaintiffs before selecting the presumptively most adequate plaintiff - and
7 hence the presumptive lead plaintiff. The presumptive lead plaintiff has the largest
8 financial interest in the relief sought by the class and otherwise satisfies the
9 requirements of Rule 23 of the Federal Rules of Civil Procedure. *Id.*, citing 15 U.S.C.
10 §78u-4(a)(3)(B)(iii)(I). To make this comparison, the district court must calculate
11 each potential lead plaintiff's financial interest in the litigation. *Id.* at 730, n.4. In
12 other words, the district court must compare the financial stakes of the various
13 plaintiffs and determine which plaintiff has the most to gain from the lawsuit. *Id.* at
14 729-730.

15 The district court must then focus its attention on that plaintiff and determine,
16 based on the information he has provided in his pleadings and declarations, whether
17 he satisfies the requirements of Rule 23(a), in particular those of *typicality* and
18 *adequacy*. *Id.* at 730 (emphasis added). If the plaintiff with the largest financial
19 stake in the controversy provides information that satisfies these requirements, he
20 becomes the presumptively most adequate plaintiff. *Id.*

21 The third step of the process is to give other plaintiffs an opportunity to rebut
22 the presumptive lead plaintiff's showing that it satisfies the typicality and adequacy
23 requirements of Rule 23. *Id.*, citing 15 U.S.C. §78u-4(a)(3)(B)(iii)(II). At the third
24 stage, the process turns adversarial and other plaintiffs may present evidence that
25 disputes the Lead Plaintiff's prima facie showing of typicality and adequacy. *Id.*
26 The district court may need to hold an evidentiary hearing, and to make a renewed
27 determination of typicality and adequacy. *Id.*, citing *In re Cendant Corp. Litig.*, 264
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1 F.3d 201, 268. n.6 (3d Cir. 2001), *cert. denied*, 152 L. Ed. 2d 212, 122 S. Ct. 1300
2 (2002).

3 If the plaintiff with the greatest financial stake does not satisfy the Rule 23(a)
4 criteria, the court must repeat the inquiry, this time considering the plaintiff with the
5 next-largest financial stake, until it finds a plaintiff who is both willing to serve and
6 satisfies the requirements of Rule 23. *Id.*

7 The complaint filed against defendants was commenced on August 11, 2006.
8 On August 13, 2006, counsel in that action caused notice to be published on *Market*
9 *Wire* which informed potential class members of the pendency of the action and
10 their right to move to be appointed Lead Plaintiff and to designate their choice of
11 Lead Counsel within 60 days.² *See* Bishop Decl. Ex. A.

12 **II. MOVANT IS THE MOST ADEQUATE PLAINTIFF UNDER THE**
13 **PSLRA AND SHOULD BE APPOINTED LEAD PLAINTIFF**

14 The PSLRA provides that within 60 days after the publication of the notice,
15 any person or group of persons who are members of the proposed class may apply to
16 the court to be appointed Lead Plaintiff. 15 U.S.C. §78u-4(a)(3)(A)(i)(II). Section
17 21D(a)(3)(B) of the Exchange Act directs the Court to consider any motions by
18 plaintiff or purported class members to serve as Lead Plaintiff in response to any
19 such notice by not later than 90 days after the date of publication pursuant to §21D,
20 or as soon as practicable after the Court decides any pending motion to consolidate
21 any actions asserting substantially the same claim or claims. Under this section of
22 the Exchange Act, the court “shall” appoint the “most adequate plaintiff,” and is to
23 presume that plaintiff is the person, or group of persons, which:

- 24 (aa) has either filed the complaint or made a motion in response to a
25 notice . . . ;

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27
28 ² Additional notices were also published by other counsel.

1 (bb) in the determination of the court, has the largest financial interest
2 in the relief sought by the class; and
3 (cc) otherwise satisfies the requirements of Rule 23 of the Federal
4 Rules of Civil Procedure.

5 §21D(a)(3)(B)(iii)(I); 15 U.S.C. §78u-4(a)(3)(B)(iii)(I).

6 Movant incurred a substantial loss during the Class Period. *See* Bishop Decl.
7 Exs. B and C. *Id.* Movant therefore believes that he has the largest financial interest
8 in the relief sought by the Class and are thus presumptively entitled to appointment
9 as Lead Plaintiff.

10 Movant also satisfies the requirements of Rule 23 of the Federal Rules of Civil
11 Procedure because his claims are typical of the claims of the Class, he will fairly and
12 adequately represent the interests of the class because his interests are clearly aligned
13 with the members of the Class and he has retained experienced class counsel to
14 represent the Class. Accordingly, Movant hereby seeks approval for his appointment
15 as Lead Plaintiff and for appointment of his counsel as Lead Counsel, and for the
16 consolidation of the related actions.

17 **A. Movant Makes His Motion Within 60 Days of Publication of Notice**

18 As set forth in his certification, Movant has reviewed a complaint filed against
19 defendants, adopted its allegations and expressed his willingness to serve as
20 representative of the class. Bishop Decl. Ex. A. Further, Movant timely brings this
21 motion within 60 days of publication of the required notice. *See* Bishop Decl. Ex. A.

22 **B. Movant Has the Largest Financial Interest in the Relief Sought**

23 During the Class Period, Movant purchased his Broadcom stock at prices
24 artificially inflated by defendants' false and misleading statements and has suffered
25 substantial losses during the Class Period.³ *See* Bishop Decl. Exs. B and C. Indeed,
26

27 ³ Pursuant to Section 21D(e)(1) of the 1934 Act, the calculated damages for
28 plaintiffs holding their shares through the end of the class period is "the difference

1 as the result of his purchases during the Class Period, Movant incurred a substantial
2 loss. *Id.* To the best of his knowledge, Movant has the largest financial interest in
3 the relief sought by the Class. Movant is, therefore, presumptively the most adequate
4 Lead Plaintiff pursuant to the PSLRA. *See* 15 U.S.C. §78u-4(a)(3)(B)(iii)(I)(bb).

5 **C. The Proposed Lead Plaintiff Is Qualified under Rule 23**

6 In addition to possessing the largest financial interest in the outcome of the
7 litigation, the PSLRA provides that the Lead Plaintiff must also “otherwise satisfy
8 the requirements of Rule 23 of the Federal Rules of Civil Procedure.” 15 U.S.C.
9 §78u-4(a)(3)(B)(iii)(I)(cc). With respect to the qualifications of the class
10 representative, Rule 23(a) requires that the claims be typical of the claims of the
11 Class and that the representative will fairly and adequately protect the interests of the
12 Class. As detailed below, Movant satisfies the typicality and adequacy requirements
13 of Rule 23(a).

14 **1. The Claims of the Proposed Lead Plaintiff Are Typical**
15 **Of the Claims of the Class**

16 The typicality requirement of Rule 23(a)(3) is satisfied when a named plaintiff
17 has: (a) suffered the same or similar injuries as the absent class members; (b) as a
18 result of the same course of conduct by defendants; and (c) the claims are based on
19 the same legal issues. *De La Fuente v. Stokely-Van Camp, Inc.*, 713 F.2d 225 (7th
20 Cir. 1983). *See also, Epstein v. MCA, Inc.*, 50 F.3d 644, 668 (9th Cir. 1995), *rev'd*
21 *on other grounds sub nom. Matsushita Elec. Indus. Co. v. Epstein*, 516 U.S. 367
22 (1996). The questions of law and fact common to the Class members here which
23 predominate over questions that may affect individual claims include:

24 (a) whether the federal securities laws were violated by defendants' acts;

25 _____
26 between the purchase or sale price paid or received . . . and the mean trading price of
27 that security during the 90 day period beginning on the date on which the
28 information correcting the misstatement or omission that is the basis for the action is
disseminated to the market.” 15 U.S.C. §78u-4(e)(1).

- 1 (b) whether defendants' statements during the Class Period omitted and/or
2 misrepresented material facts;
- 3 (c) whether defendants pursued the fraudulent scheme and course of
4 conduct complained of;
- 5 (d) whether the defendants acted intentionally or recklessly;
- 6 (e) whether the market price of Broadcom's stock was artificially inflated
7 due to the activities complained of; and
- 8 (f) the extent of damages class members sustained and the
9 appropriate measure of those damages.

10 Movant's claims are typical of the claims of the members of the proposed
11 Class. Movant, as do all members of the proposed Class, alleges that Broadcom and
12 certain of its directors and high ranking officers, violated the Exchange Act by
13 publicly disseminating false and misleading statements, and by failing to disclose
14 material information regarding the backdating of options to certain Broadcom senior
15 executives during times relevant herein. Further, Movant, as did all of the members
16 of the proposed Class, acquired Broadcom stock at prices inflated by defendants'
17 misrepresentations and omissions and were damaged thereby. The typicality
18 requirement is satisfied here because the claims asserted by Movant are based on the
19 same legal theory and arise "from the same event or course of conduct giving rise to
20 the claims of other class members." See *Guenther v. Pacific Telecom, Inc.*, 123
21 F.R.D. 333 (D. Or. 1988). Accord, *Blackie v. Barrack*, 524 F.2d 891, 902-03 & n.19
22 (9th Cir. 1975), cert. denied, 429 U.S. 816 (1976); *Hanon v. Dataproducts Corp.*,
23 976 F.2d 497, 508 (9th Cir. 1992); *Freedman v. Louisiana-Pacific Corp.*, 922 F.
24 Supp. 327, 398-99 (D. Or. 1996).

25 **2. The Proposed Lead Plaintiff Will Fairly and Adequately**
26 **Represent the Interests of the Class**

27 The Movant's interests are clearly aligned with the members of the proposed
28 Class. There is no evidence of any antagonism between the interests of these

1 individuals and the proposed class members. As detailed above, Movant shares
2 substantially similar questions of law and fact with the members of the proposed
3 Class, his claims are typical of the members of the Class, and he has taken significant
4 steps to advance this litigation. In addition, Movant has amply demonstrated his
5 adequacy to serve as class representatives by signing a certification affirming his
6 willingness to serve as, and assume the responsibilities of, class representative.
7 Finally, Movant has selected and retained counsel highly experienced in prosecuting
8 securities class actions such as this to represent them. For these reasons, Movant
9 should be appointed Lead Plaintiff.

10 **III. THIS COURT SHOULD APPROVE THE PROPOSED LEAD**
11 **PLAINTIFF'S CHOICE OF LEAD COUNSEL**

12 The PSLRA vests authority in the Lead Plaintiff to select and retain Lead
13 Counsel, subject to court approval. *See* §21D(a)(3)(B)(v). Movant has selected the
14 law firm of Stull, Stull & Brody to serve as Lead Counsel for the Class. This firm
15 possesses extensive experience in the area of securities litigation and has
16 successfully prosecuted numerous securities fraud class actions on behalf of injured
17 investors. *See* Bishop Decl. Ex. D.

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1 **IV. CONCLUSION**

2 For all the foregoing reasons, Movant respectfully requests that this Court
3 appoint Movant as Lead Plaintiff pursuant to Section 21D(a)(3)(B) of the 1934 Act,
4 and approve his choice of Stull, Stull & Brody as Lead Counsel for the Class
5 pursuant to Section 21D(a)(3)(B)(v) of the 1934 Act.

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7 Dated: October 12, 2006

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8
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