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

17 In re BROADCOM CORPORATION
18 CLASS ACTION LITIGATION

Lead Case No.: CV-06-5036-R (CWx)

19 } **PRELIMINARY APPROVAL**
20 } **ORDER PROVIDING FOR**
21 } **NOTICE AND HEARING IN**
22 } **CONNECTION WITH PROPOSED**
23 } **CLASS ACTION SETTLEMENT**
24 } **WITH BROADCOM DEFENDANTS**

Honorable Manuel L. Real

25 WHEREAS, as of April 30, 2010, certain parties to the above-captioned
26 action (the "Litigation") entered into a Stipulation and Agreement of Settlement
27 With Broadcom Defendants (the "Stipulation"), which is subject to review under
28 Rule 23 of the Federal Rules of Civil Procedure and which, together with the

1 exhibits thereto, sets forth the terms and conditions of the proposed settlement of
2 the claims alleged in the Consolidated Amended Complaint (“Amended
3 Complaint”) on the merits and with prejudice (the “Settlement”); and the Court
4 having read and considered the Stipulation and the accompanying exhibits; and the
5 parties to the Stipulation having consented to the entry of this Order; and all
6 capitalized terms used herein having the meanings defined in the Stipulation;

7 NOW, THEREFORE, IT IS HEREBY ORDERED, this 1st day of June,
8 2010 that:

9 1. The Court has reviewed the Stipulation and preliminarily finds the
10 Settlement set forth therein to be fair, reasonable and adequate, subject to further
11 consideration at the settlement hearing described below.

12 2. The Court hereby preliminarily certifies the following class for the
13 purposes of settlement only (the “Settlement Class”), pursuant to Rule 23(a) and
14 Rule 23(b)(3) of the Federal Rules of Civil Procedure: all persons and entities that
15 purchased or otherwise acquired the Class A common stock of Broadcom during
16 the period from July 21, 2005 through July 13, 2006, inclusive, and were allegedly
17 damaged thereby. Excluded from the Settlement Class are: the current or former
18 defendants in the Litigation; the officers and directors of the Company; the
19 members of the immediate families of the current or former individual defendants
20 in the Litigation; the legal representatives, heirs, successors or assigns of any
21 excluded Person; any entity in which any current or former defendant has or had a
22 controlling interest; shares of Broadcom Class A common stock purchased by any
23 Broadcom employee who acquired the shares through the exercise of incentive
24 stock options from July 21, 2005 through July 13, 2006, inclusive; and any Person
25 who timely and validly seeks exclusion from the Settlement Class.

26 3. The Court finds and concludes that the prerequisites of class action
27 certification under Fed. R. Civ. P. 23(a) and 23(b)(3) have been satisfied for the
28 Settlement Class defined herein and for the purposes of settlement only, in that:

- 1 (a) the members of the Settlement Class are so numerous that
2 joinder of all Class Members is impracticable;
- 3 (b) there are questions of law and fact common to the Class
4 Members;
- 5 (c) the claims of New Mexico State Investment Council (“Lead
6 Plaintiff”) are typical of the Settlement Class’s claims;
- 7 (d) Lead Plaintiff and its counsel have fairly and adequately
8 represented and protected the interests of the Settlement Class;
- 9 (e) the questions of law and fact common to the Class Members
10 predominate over any individual questions; and
- 11 (f) a class action is superior to other available methods for the fair
12 and efficient adjudication of the controversy, considering that the claims of Class
13 Members in the Litigation are substantially similar and would, if tried, involve
14 substantially identical proofs and may therefore be efficiently litigated and
15 resolved on an aggregate basis as a class action; the amounts of the claims of
16 many of the Class Members are too small to justify the expense of individual
17 actions; and it does not appear that there is any intent among Class Members in
18 individually controlling the litigation of their claims.

19 4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for
20 the purposes of the Settlement only, Lead Plaintiff New Mexico State Investment
21 Council is preliminarily certified as Class Representative. The law firm of Labaton
22 Sucharow LLP is preliminarily appointed Class Counsel.

23 5. A hearing (the “Settlement Hearing”) pursuant to Rule 23(e) of the
24 Federal Rules of Civil Procedure is hereby scheduled to be held before the Court
25 on August 2, 2010, at 10:00 a.m. for the following purposes:

- 26 (a) to determine whether the proposed Settlement is fair,
27 reasonable and adequate, and should be approved by the Court;
- 28

1 (b) to determine whether the Final Order and Judgment as to
2 Broadcom Defendants (“Judgment”) as provided under the Stipulation should be
3 entered, dismissing the Amended Complaint filed herein, on the merits and with
4 prejudice, and to determine whether the release by the Settlement Class of the
5 Released Claims, as set forth in the Stipulation, should be provided to the
6 Released Defendant Parties;

7 (c) to determine whether the Settlement Class should be certified
8 for the purposes of settlement only and the appointment of Lead Plaintiff and
9 Lead Counsel as Class Representative and Class Counsel, respectively;

10 (d) to determine whether the proposed Plan of Allocation for the
11 proceeds of the Settlement is reasonable and should be approved by the Court;

12 (e) to consider Lead Counsel’s application for an award of
13 attorneys’ fees and expenses;

14 (f) to consider Lead Plaintiff’s application, if any, for its
15 reasonable costs and expenses (including lost wages) relating to its representation
16 of the Settlement Class; and

17 (g) to rule upon such other matters as the Court may deem
18 appropriate.

19 6. The Court reserves the right to approve the Settlement with or without
20 modification and with or without further notice of any kind. The Court further
21 reserves the right to enter the Judgment approving the Settlement and dismissing
22 the Amended Complaint on the merits and with prejudice regardless of whether it
23 has approved the Plan of Allocation or awarded attorneys’ fees and expenses. The
24 Court may also adjourn the Settlement Hearing or modify any of the dates herein
25 without further notice to members of the Settlement Class.

26 7. The Court approves the form, substance and requirements of the
27 Notice of Pendency of Class Action and Proposed Settlement With Broadcom
28

1 Defendants (the “Notice”) and the Proof of Claim and Release form (“Proof of
2 Claim”), substantially in the forms annexed hereto as Exhibits 1 and 2 respectively.

3 8. The Court approves the appointment of The Garden City Group as the
4 Claims Administrator. The Claims Administrator shall cause the Notice and the
5 Proof of Claim, substantially in the forms annexed hereto, to be mailed, by first
6 class mail, postage prepaid, on or before June 4, 2010 (“Notice Date”), to all Class
7 Members who can be identified with reasonable effort. Defendant Broadcom
8 Corporation (“Broadcom”), to the extent it has not already done so, shall cause its
9 transfer records and shareholder information to be made available to the Claims
10 Administrator within seven (7) calendar days from the date of this order for the
11 purpose of identifying and giving notice to the Settlement Class. The Claims
12 Administrator shall use reasonable efforts to give notice to nominee purchasers
13 such as brokerage firms and other persons or entities who purchased or otherwise
14 acquired Broadcom Class A common stock during the period from July 21, 2005
15 through July 13, 2006, inclusive, (the “Class Period”) as record owners but not as
16 beneficial owners. Such nominee purchasers are directed, within seven (7)
17 calendar days of their receipt of the Notice, to either send copies of the Notice and
18 Proof of Claim to their beneficial owners by first class mail, or to provide the
19 Claims Administrator with lists of the names and addresses of the beneficial
20 owners, and the Claims Administrator is ordered to send the Notice and Proof of
21 Claim promptly to such identified beneficial owners by first class mail. Nominee
22 purchasers who elect to send the Notice and Proof of Claim to their beneficial
23 owners shall also send a statement to the Claims Administrator confirming that the
24 mailing was made as directed. Additional copies of the Notice shall be made
25 available to any record holder requesting such for the purpose of distribution to
26 beneficial owners, and such record holders shall be reimbursed from the Settlement
27 Fund, after receipt by the Claims Administrator of proper documentation, for their
28 reasonable expenses incurred in sending the Notices and Proofs of Claim to

1 beneficial owners. Lead Counsel shall, at or before the Settlement Hearing, file
2 with the Court proof of mailing of the Notice and Proof of Claim.

3 9. The Court approves the form of the Summary Notice of Pendency of
4 Class Action and Proposed Settlement With Broadcom Defendants (“Summary
5 Notice”) substantially in the form annexed hereto as Exhibit 3 and directs that Lead
6 Counsel shall cause the Summary Notice to be published in *The Wall Street*
7 *Journal* and transmitted over *Business Wire* within fourteen (14) calendar days of
8 the Notice Date. Lead Counsel shall, at or before the Settlement Hearing, file with
9 the Court proof of publication of the Summary Notice.

10 10. The form and content of the notice program described herein, and the
11 method set forth herein of notifying the Settlement Class of the Settlement and its
12 terms and conditions, meet the requirements of Rule 23 of the Federal Rules of
13 Civil Procedure, Section 21D(a)(7) of the Securities Exchange Act of 1934, 15
14 U.S.C. § 78u-4(a)(7), as amended by the Private Securities Litigation Reform Act
15 of 1995, and due process, constitute the best notice practicable under the
16 circumstances, and shall constitute due and sufficient notice to all persons and
17 entities entitled thereto.

18 11. In order to be entitled to receive a distribution from the net monetary
19 recovery pursuant to the Settlement (the “Net Settlement Fund”), in the event the
20 Settlement is effected in accordance with the terms and conditions set forth in the
21 Stipulation, each Class Member shall take the following actions and be subject to
22 the following conditions:

23 (a) A properly executed Proof of Claim, substantially in the form
24 attached hereto as Exhibit 2, must be submitted to the Claims Administrator, at
25 the address indicated in the Notice, postmarked not later than seventy (70)
26 calendar days after the Notice Date. Such deadline may be further extended by
27 Court Order. Each Proof of Claim shall be deemed to have been submitted when
28 postmarked (if properly addressed and mailed by first class mail, postage prepaid)

1 provided such Proof of Claim is actually received prior to the motion for an order
2 of the Court approving distribution of the Net Settlement Fund. Any Proof of
3 Claim submitted in any other manner shall be deemed to have been submitted
4 when it was actually received at the address designated in the Notice. Any Class
5 Member who does not timely submit a Proof of Claim within the time provided
6 for shall be barred from sharing in the distribution of the proceeds of the Net
7 Settlement Fund, unless otherwise ordered by the Court.

8 (b) The Proof of Claim submitted by each Class Member must
9 satisfy the following conditions, unless otherwise ordered by the Court: (i) it must
10 be properly completed, signed and submitted in a timely manner in accordance
11 with the provisions of the preceding subparagraph; (ii) it must be accompanied by
12 adequate supporting documentation for the transactions reported therein, in the
13 form of broker confirmation slips, broker account statements, an authorized
14 statement from the broker containing the transactional information found in a
15 broker confirmation slip, or such other documentation as is deemed adequate by
16 Lead Counsel; (iii) if the person executing the Proof of Claim is acting in a
17 representative capacity, a certification of her current authority to act on behalf of
18 the Class Member must be included in the Proof of Claim; and (iv) the Proof of
19 Claim must be complete and contain no material deletions or modifications of any
20 of the printed matter contained therein and must be signed under penalty of
21 perjury.

22 (c) As part of the Proof of Claim, each Class Member shall submit
23 to the jurisdiction of the Court with respect to the claim submitted, and shall
24 (subject to effectuation of the Settlement) release all Released Claims as provided
25 in the Stipulation.

26 (d) Each Proof of Claim shall be submitted to and reviewed by the
27 Claims Administrator, under the supervision of Lead Counsel, who shall
28

1 determine in accordance with this Stipulation the extent, if any, to which each
2 claim shall be allowed, subject to review by the Court.

3 (e) Proofs of Claim that do not meet the submission requirements
4 may be rejected. Prior to rejection of a Proof of Claim, the Claims Administrator
5 shall communicate with the claimant in order to afford the claimant the
6 opportunity to remedy curable deficiencies in the Proof of Claim submitted. The
7 Claims Administrator, under supervision of Lead Counsel, shall notify, in a timely
8 fashion and in writing, all claimants whose Proofs of Claim they propose to reject
9 in whole or in part, setting forth the reasons therefore, and shall indicate in such
10 notice that the claimant whose claim is to be rejected in whole or in part has the
11 right to a review by the Court if such claimant so desires and if such claimant
12 complies with the requirements below.

13 (f) If any claimant who is notified by the Claims Administrator
14 that the Claims Administrator intends to propose that his, her or its claim be
15 rejected in whole or in part desires to contest such rejection, such claimant must,
16 within the deadline established by the Claims Administrator, serve upon the
17 Claims Administrator a notice and statement of reasons indicating the claimant's
18 grounds for contesting the rejection along with any supporting documentation,
19 and requesting a review thereof by the Court. If a dispute concerning a claim
20 cannot be otherwise resolved, Lead Counsel shall thereafter present the request for
21 review to the Court.

22 12. Class Members shall be bound by all orders, determinations and
23 judgments in this Litigation, whether favorable or unfavorable, unless such persons
24 request exclusion from the Settlement Class in a timely and proper manner, as
25 hereinafter provided. A Class Member wishing to make such an exclusion request
26 shall mail the request in written form by first class mail postmarked no later than
27 July 16, 2010, seventeen (17) calendar days prior to the date set herein for the
28 Settlement Hearing, to the address designated in the Notice for such exclusions.

1 Such request for exclusion shall clearly indicate the name, address and telephone
2 number of the person seeking exclusion, that the sender requests to be excluded
3 from the Settlement Class in *In re Broadcom Corp. Class Action Litigation*, No.
4 CV-06-5036-R (CWx), and must be signed by such person. Such persons
5 requesting exclusion are also directed to state: the date(s), price(s), and number(s)
6 of shares of all purchases, acquisitions, and sales of Broadcom common stock
7 during the Class Period. The request for exclusion shall not be effective unless it
8 provides the required information and is made within the time stated above, or the
9 exclusion is otherwise accepted by the Court.

10 13. Class Members requesting exclusion from the Settlement Class shall
11 not be entitled to receive any payment out of the Net Settlement Fund as described
12 in the Stipulation and Notice.

13 14. The Court will consider objections to the Settlement, the Plan of
14 Allocation, the award of attorneys' fees or reimbursement of expenses only if such
15 objections and any supporting papers are filed in writing with:

16 Clerk of the Court
17 United States District Court
18 for the Central District of California
19 Spring Street Courthouse
20 312 N. Spring Street,
21 Los Angeles, CA 90012

22 and copies of all such papers are delivered or sent by first class mail (with a
23 corresponding postmark), on or before July 16, 2010, seventeen (17) calendar days
24 prior to the date set herein for the Settlement Hearing, upon each of the following:

25 ***On behalf of Lead Plaintiff and the Settlement Class:***

26 LABATON SUCHAROW LLP
27 Thomas A. Dubbs
28 Nicole M. Zeiss
140 Broadway
New York, New York 10005

On behalf of the Settling Defendants:

1 IRELL & MANELLA LLP
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2 1800 Avenue of the Stars
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3 Los Angeles, CA 90067-4276

4 Counsel for Defendant Broadcom
Corporation

5 MCDERMOTT, WILL & EMERY
6 Gordon A. Greenberg
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8 Counsel for Defendant Henry Samuelli

9 O'MELVENY & MYERS LLP
10 Seth Aronson
400 South Hope Street
11 Los Angeles, CA 90071

12 Counsel for Defendant David A. Dull

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14 Attendance at the hearing is not necessary; however, persons wishing to be heard
15 orally in opposition to the approval of the Settlement, the Plan of Allocation,
16 and/or the requests for attorneys' fees and other expenses are required to indicate
17 in their written objection their intention to appear at the hearing. Persons who
18 intend to object to the Settlement, the Plan of Allocation, and/or the requests for an
19 award of attorneys' fees and other expenses and desire to present evidence at the
20 Settlement Hearing must include in their written objections the identity of any
21 witnesses they may call to testify and exhibits they intend to introduce into
22 evidence at the Settlement Hearing. Class Members do not need to appear at the
23 hearing or take any other action to indicate their approval.

24 15. Any Class Member who does not make his, her or its objection in the
25 manner provided shall be deemed to have waived such objection and shall forever
26 be foreclosed from making any objection to the fairness, reasonableness or
27 adequacy of the Settlement, to the Plan of Allocation, and/or the requests for an
28 award of attorneys' fees and other expenses, unless otherwise ordered by the

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1 Court, but shall otherwise be bound by the judgment to be entered and the releases
2 to be given.

3 16. Pending final determination of whether the Settlement should be
4 approved, Lead Plaintiff, all Class Members, and each of them, and anyone who
5 acts or purports to act on their behalf, shall not institute, commence or prosecute
6 any action which asserts Released Claims against the Released Defendant Parties.

7 17. As provided in the Stipulation, Lead Counsel may pay the Claims
8 Administrator a portion of the reasonable fees and costs associated with giving
9 notice to the Settlement Class and the review of claims and administration of the
10 Settlement out of the Settlement Fund, including paying taxes, without further
11 order of the Court.

12 18. All papers in support of the Settlement, Plan of Allocation, Lead
13 Counsel's request for an award of attorneys' fees and expenses and Lead Plaintiff's
14 request, if any, for its reasonable costs and expenses (including lost wages) relating
15 to its representation of the Settlement Class shall be filed with the Court and served
16 by overnight mail or hand delivery on or before July 12, 2010, twenty-one (21)
17 calendar days prior to the date set herein for the Settlement Hearing. Any reply
18 papers in further support of the above motions shall be served and filed on or
19 before seven (7) calendar days prior to the Settlement Hearing.

20 19. No person who is not a Class Member, Lead Plaintiffs or Lead
21 Counsel shall have any right to any portion of, or to any distribution of, the Net
22 Settlement Fund unless otherwise ordered by the Court or otherwise provided in
23 the Stipulation.

24 20. All funds held in escrow shall be deemed and considered to be in
25 *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court
26 until such time as such funds shall be distributed pursuant to the Stipulation and/or
27 further order of the Court.

1 21. If any specified condition to the Settlement set forth in the Stipulation
2 is not satisfied and Lead Plaintiff, Lead Counsel or Settling Defendants elect to
3 terminate the Settlement as provided in paragraphs 40 through 42 of the
4 Stipulation, then, in any such event, the Stipulation, including any amendment(s)
5 thereof, except as expressly provided in the Stipulation, and this Preliminary
6 Approval Order shall be null and void, of no further force or effect, and without
7 prejudice to any Settling Party, and may not be introduced as evidence or used in
8 any actions or proceedings by any person or entity against the Settling Parties, and
9 each Settling Party shall be restored to his, her or its respective litigation position
10 as it existed prior to the execution of the Agreement in Principle by the Settling
11 Parties on December 22, 2009.

12 22. The Court retains exclusive jurisdiction over the Litigation to consider
13 all further matters arising out of or connected with the Settlement.

14 Dated: June 1, 2010



17 Honorable Manuel L. Real
18 UNITED STATES DISTRICT JUDGE