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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

**In re: BROCADE SECURITIES
LITIGATION**

Consolidated Case No.: 3:05-CV-02042-CRB

**STIPULATION AND AGREEMENT OF
SETTLEMENT AMONG CLASS
REPRESENTATIVES AND KPMG LLP**

1 **STIPULATION AND AGREEMENT OF SETTLEMENT**
2 **AMONG CLASS REPRESENTATIVES AND KPMG LLP**

3 This Stipulation and Agreement of Settlement (the “Stipulation”) is submitted in the
4 above-captioned case, *In re: Brocade Securities Litigation*, Consolidated Case No.
5 3:05-CV-02042-CRB (the “Action”), pursuant to Rule 23 of the Federal Rules of Civil Procedure.
6 Subject to the approval of the United States District Court for the Northern District of California,
7 San Francisco Division (the “Court”), this Stipulation is entered into among Lead Plaintiff and
8 Class Representative, the Arkansas Public Employees Retirement System (“APERS”), and Class
9 Representative, Erie County Public Employees Retirement System (“ERIE”) (collectively,
10 “Class Representatives”), on behalf of themselves and the Class (as hereinafter defined), and
11 Defendant KPMG LLP (“KPMG”). The Class Representatives, on behalf of themselves and the
12 Class, and KPMG shall be collectively referred to herein as the “Parties.” All terms with initial
13 capitalization shall have the meanings ascribed to them in ¶1 herein.

14 WHEREAS:

15 A. Beginning on May 19, 2005, a series of class action complaints was filed against
16 Brocade, certain of its officers and directors, and KPMG alleging violations of the federal
17 securities laws. The Court held hearings and heard oral argument on the designation of a lead
18 plaintiff on August 26, 2005 and October 7, 2005, and permitted supplemental briefing on each
19 occasion in order to gather more information about certain proposed lead plaintiffs’ standing,
20 structure, transparency and authority to serve as lead plaintiff. The Court also permitted limited
21 discovery, including depositions.

22 B. On January 12, 2006, the Court appointed APERS as Lead Plaintiff. The Court
23 concluded that APERS was typical of other class members and would adequately and properly
24 represent the Class in this Action.

25 C. APERS filed its Consolidated Class Action Complaint on April 14, 2006 (the
26 “Complaint”). Defendants (as defined herein) filed motions to dismiss the Complaint on July 14,
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1 2006.

2 D. On July 20, 2006, three (3) months after APERS filed the Complaint, the
3 Securities and Exchange Commission ("SEC") filed an enforcement action against Brocade's
4 former Chief Executive Officer, Greg Reyes, former Chief Financial Officer, Antonio Canova,
5 and former Vice President of Human Resources, Stephanie Jensen (the "SEC Action"). In the
6 "Fourth Claim for Relief" asserted by the SEC in the SEC action, the SEC asserted that Reyes,
7 Canova, and Jensen defrauded Brocade's auditors (*i.e.*, KPMG) throughout the class period in
8 violation of Rule 13b2-2 of the Exchange Act, 17 C.F.R. § 240.13b2-2. That same day, the
9 United States of America filed a criminal action against Reyes and Jensen (the "DOJ Criminal
10 Action"). On August 10, 2006, a federal Grand Jury indicted Reyes and Jensen, charging them
11 with making false statements (the "Indictment"). The Indictment also charged Reyes with four
12 counts of making false statements to Brocade's auditor (*i.e.*, KPMG), in violation of 15 U.S.C. §
13 78ff and 17 C.F.R. § 240.13b2-2.

14 E. On September 29, 2006, APERS filed a Motion for Partial Modification of the
15 PSLRA Discovery Stay. Defendants filed oppositions to APERS' Motion on October 11, 2006.

16 F. On November 3, 2006, the Court held a hearing on Defendants' motions to
17 dismiss and APERS' Motion for Partial Modification of the PSLRA Discovery Stay. The Court
18 denied Brocade's, Reyes', and Canova's motions to dismiss from the bench. The Court granted
19 APERS leave to file an amended complaint as to Sonsini, Neiman, and Dempsey (the "Audit
20 Committee Defendants"). The Court also granted KPMG's motion to dismiss, but permitted
21 APERS leave to file an amended complaint as to KPMG by January 2, 2007.

22 G. In an additional ruling from the bench, the Court granted APERS' Motion for
23 Partial Modification of the PSLRA Discovery Stay. The Court held that Brocade was required to
24 produce to APERS, no later than the day APERS filed its amended complaint, all documents and
25 other data that had been produced to the federal regulators and other parties.

26 H. After the November 3, 2006 hearing, APERS and KPMG entered into settlement
27 discussions. To facilitate these discussions, KPMG agreed that APERS would not be required to
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1 file an amended complaint against KPMG on the January 2, 2007 deadline established by the
2 Court. KPMG agreed to extend this deadline by 45 days in order to attempt to reach a resolution
3 of APERS' claims against KPMG. On or about June 4, 2007, APERS and KPMG reached an
4 agreement in principle to resolve APERS' claims against KPMG.

5 I. On December 18-20, 2006, APERS and Brocade engaged in a mediation before
6 the Honorable Layn R. Phillips. The mediation was unsuccessful.

7 J. On January 2, 2007, APERS filed its Amended Consolidated Class Action
8 Complaint against Brocade, Reyes, Canova, Sonsini, Dempsey and Neiman (the "Amended
9 Complaint"). On March 9, 2007, the Audit Committee Defendants filed a motion to dismiss the
10 Amended Complaint. On August 27, 2007, the Court denied the Audit Committee Defendants'
11 motion to dismiss.

12 K. The criminal trial of Greg Reyes began on June 18, 2007, and concluded on
13 August 7, 2007, with a unanimous guilty verdict on all ten counts, including the four counts of
14 making false statements to KPMG.

15 L. On June 22, 2007, APERS and ERIE filed their Motion for Class Certification.
16 Brocade filed its opposition on August 3, 2007, and APERS and ERIE filed their reply on
17 August 24, 2007.

18 M. On August 23, 2007, Brocade filed a motion for partial summary judgment
19 regarding loss causation. By agreement of the parties, the briefing on that motion was stayed.

20 N. On August 24, 2007, APERS moved for partial summary judgment on collateral
21 estoppel grounds regarding Reyes' liability. Reyes filed his opposition on September 21, 2007,
22 and APERS filed its reply on September 28, 2007. On October 12, 2007, the Court granted
23 APERS' motion for partial summary judgment, in part, regarding Brocade's 10-Ks filed with the
24 SEC for years ended 2001, 2002 and 2003.

25 O. On October 12, 2007, the Court granted the motion for class certification filed by
26 APERS and ERIE, appointing them as Class Representatives in the Action and certifying a class
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1 of persons who purchased or otherwise acquired Brocade common stock between May 18, 2000
2 and May 15, 2005, inclusive, and who were damaged thereby.

3 P. On October 22, 2007, Plaintiffs' Counsel, Brocade's Counsel and counsel for
4 Reyes engaged in a further mediation before the Honorable Layn R. Phillips. The mediation was
5 unsuccessful. Plaintiffs' Counsel and Brocade's Counsel continued the mediation process via
6 separate teleconferences with Judge Phillips, albeit unsuccessfully, through the remainder of
7 2007.

8 Q. On January 18, 2008, Class Representatives moved for partial summary judgment
9 seeking a determination that Reyes acted within the course and scope of his employment when
10 he executed the Form 10-Ks for fiscal years ended 2001, 2002, and 2003. The Court granted
11 Class Representatives' motion on May 13, 2008.

12 R. On May 13, 2008, Plaintiffs' Counsel, Brocade's Counsel and counsel for Reyes
13 engaged in a further mediation with the Honorable Layn R. Phillips and the Honorable Charles
14 Renfrew. This mediation concluded with a mediator's proposal that was accepted by Plaintiffs'
15 Counsel and Brocade's Counsel on May 30, 2008.

16 S. Class Representatives, through Plaintiffs' Counsel, have conducted an
17 investigation related to the claims and the underlying events and transactions alleged in the
18 Complaint and the Amended Complaint. Class Representatives, through Plaintiffs' Counsel,
19 have analyzed the evidence adduced during pretrial discovery and have researched the applicable
20 law with respect to the claims of Class Representatives and the Class against KPMG and the
21 potential defenses thereto.

22 T. With the assistance of the Honorable Layn R. Phillips and the Honorable Charles
23 Renfrew acting as mediators, Class Representatives, through Plaintiffs' Counsel, have conducted
24 independent discussions and arm's-length negotiations with Brocade with respect to a
25 compromise and settlement of the Action and with a view toward settling the issues in dispute
26 and achieving the best relief possible consistent with the interests of the Class in the Action.

1 U. Based upon their investigation and pretrial discovery as set forth above, Plaintiffs’
2 Counsel has recommended and Class Representatives have concluded that the terms and
3 conditions of this Stipulation are fair, reasonable and adequate to Class Representatives and the
4 Class, and are in their best interests, and Class Representatives have agreed to settle the claims
5 raised or could have been raised in the Action pursuant to the terms and provisions of this
6 Stipulation, after considering (a) the substantial benefits that Class Members will receive from
7 the Settlement, (b) the attendant risks of litigation, and (c) the desirability of permitting the
8 Settlement to be consummated as provided by the terms of this Stipulation.

9 V. KPMG denies that it has committed any act or omission giving rise to any liability
10 and/or violation of law whatsoever and will not agree to pay any monetary payment for
11 “damages” to Class Representatives or the Class. Nevertheless, KPMG has agreed to reimburse
12 Class Representatives for reasonable costs and expenses (excluding attorney fees) in an amount
13 not to exceed \$98,500 for the sole purpose of eliminating the burden and expense of this
14 litigation. This Stipulation shall in no event be construed or deemed to be evidence of, or an
15 admission or concession on the part of, KPMG with respect to any claim of any fault or liability
16 or wrongdoing or damage whatsoever, or any infirmity in the defenses KPMG has asserted or
17 would assert.

18 W. The Parties recognize that the Action has been litigated by APERS and ERIE and
19 defended by KPMG in good faith, that the Action is being voluntarily settled following
20 arm’s-length bargaining between Class Representatives and KPMG and upon advice of counsel,
21 and that Class Representatives and KPMG believe the terms of the Settlement (as defined herein)
22 and this Stipulation are fair, reasonable and adequate to the Class. This Stipulation shall not be
23 construed or deemed to be evidence of, or an admission or concession on the part of, any Class
24 Representative or any Class Member of any infirmity in the claims asserted in the Action or any
25 other action.

26 NOW THEREFORE, in consideration of the foregoing recitals and the benefits flowing
27 to the Parties from the Settlement, it is hereby STIPULATED AND AGREED by and among the
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1 Parties, through their respective counsel, subject to approval of the Court pursuant to Rule 23(e)
2 of the Federal Rules of Civil Procedure, that all Settled Claims (as defined herein) and all Settled
3 Defendants' Claims (as defined herein) shall be compromised, settled, released and dismissed
4 with prejudice, upon and subject to the following terms and conditions:

5 **DEFINITIONS**

6 1. As used in this Stipulation and any exhibits attached hereto and made a part
7 hereof, the following terms shall have the following meanings:

8 (a) "Action" means the above-styled case, *In re: Brocade Securities*
9 *Litigation*, Consolidated Case No. 3:05-CV-02042-CRB, pending in the United States District
10 Court, Northern District of California, San Francisco Division, and consisting of all of the
11 following consolidated cases: (i) 3:05-CV-02042-CRB; (ii) 3:05-CV-02139-CRB; (iii)
12 3:05-CV-02316-CRB; (iv) 3:05-CV-02374-CRB; (v) 3:05-CV-02396-CRB; and (vi)
13 3:05-CV-02692-CRB.

14 (b) "Alternative Judgment" has the meaning set forth in ¶ 12 hereof.

15 (c) "Amended Complaint" has the meaning set forth in ¶ J hereof.

16 (d) "APERS" means the Arkansas Public Employees Retirement System.

17 (e) "Bar Order" has the meaning set forth in ¶ 4 hereof.

18 (f) "Brocade" or the "Company" means Brocade Communications Systems,
19 Inc. and its subsidiaries, affiliates, or successors.

20 (g) "Brocade's Counsel" means the law firm of Cooley Godward Kronish
21 LLP, which represents Brocade.

22 (h) "Brocade Securities" means Brocade common stock.

23 (i) "Claims Administrator" means, subject to approval and appointment by
24 the Court, Epiq Systems Inc. ("Epiq"), which shall administer the Settlement.

25 (j) "Class" shall be defined as follows: All persons and entities who
26 purchased or otherwise acquired Brocade Securities during the Class Period, and who were
27 damaged thereby. Excluded from the Class are: (i) Defendants; (ii) all officers, directors, and
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1 partners of any Defendant and of any Defendant’s partnerships, subsidiaries, or affiliates at all
2 relevant times; (iii) members of the immediate family of any of the foregoing excluded parties;
3 (iv) the legal representatives, heirs, successors, and assigns of any of the foregoing excluded
4 parties; and (v) any entity in which any of the foregoing excluded parties has or had a controlling
5 interest at all relevant times. Also excluded from the Class are any putative members of the
6 Class who exclude themselves by timely requesting exclusion in accordance with the
7 requirements set forth in the Notice.

8 (k) “Class Member” means a member of the Class.

9 (l) “Class Period” means the period of time between May 18, 2000 and May
10 15, 2005, inclusive.

11 (m) “Class Representatives” means APERS and ERIE.

12 (n) “Company Action” means the action styled *Brocade Communications*
13 *Systems, Inc. v. Reyes et al.*, Case No. 3:05-CV-02233-CRB, which was originally filed on or
14 about June 1, 2005 in this Court, and in which Brocade filed a Second Amended Complaint on or
15 about August 1, 2008.

16 (o) “Complaint” has the meaning set forth in ¶ C hereof.

17 (p) “Court” means the United States District Court for the Northern District of
18 California, San Francisco Division.

19 (q) “Defendants” means Brocade, the Individual Defendants, and KPMG.

20 (r) “Derivative Actions” means: (i) the action styled *In re Brocade*
21 *Communications Systems, Inc. Derivative Litigation*, Case No. 1-05-CV-041683, pending in the
22 Superior Court of California, County of Santa Clara; (ii) the action styled *Barbour et al. v. Reyes*
23 *et al.*, Case No. 3:08-cv-02029-CRB, pending in this Court; (iii) the action styled *Jha v. Reyes et*
24 *al.*, Case No. 3:05-cv-02652-CRB, pending in this Court; (iv) the action styled *Pratt v. Reyes et*
25 *al.*, Case No. 3:05-cv-02372-CRB, pending in this Court; and (v) the action styled *Galluscio v.*
26 *Reyes et al.*, Case No. 3:05-cv-02235, pending in this Court.

1 (s) "Effective Date" means the date upon which the Settlement contemplated
2 by this Stipulation shall become effective, as set forth in ¶ 12 hereof.

3 (t) "ERIE" means Erie County Public Employees Retirement System.

4 (u) "Escrow Agent" means Century Bank, NA, pursuant to an Escrow
5 Agreement, to be executed in connection with this Settlement.

6 (v) "Fairness Hearing" means the hearing to be held by the Court on the date
7 specified in the Notice at which the Court will consider whether to approve the Settlement, the
8 Plan of Allocation, Plaintiffs' Counsel's application for fees and expenses, Class
9 Representatives' application for reimbursement of costs and expenses, and other matters related
10 to the Settlement.

11 (w) "Final" or "Finality," with respect to any Judgment or Alternative
12 Judgment (both defined herein), means: (i) if no appeal is filed with respect to the Judgment or
13 Alternative Judgment, the expiration date of the time provided for under the corresponding rules
14 of the applicable court or statute for filing or noticing any appeal; or (ii) if an appeal is filed
15 from the Judgment or Alternative Judgment, the date of (A) final dismissal of such appeal, or
16 the final dismissal of any proceeding on certiorari or otherwise to review the Judgment or
17 Alternative Judgment; or (B) final affirmance of such appeal, the expiration of the time to file a
18 petition for a writ of certiorari or other form of review, or the denial of a writ of certiorari or
19 other form of review of the Judgment or Alternative Judgment, and, if certiorari or other form of
20 review is granted, the date of final affirmance following review pursuant to that grant. Any
21 proceeding or order, or any appeal or petition for a writ of certiorari or other form of review
22 pertaining solely to (i) any application for attorneys' fees, costs or expenses, and/or (ii) the Plan
23 of Allocation, shall not in any way delay or preclude the Judgment or Alternative Judgment
24 from becoming Final.

25 (x) "Gross Settlement Fund" means the Settlement Amount (defined herein),
26 plus any interest on or other income or gains in respect of that amount earned while such amount
27 is held by the Escrow Agent.

1 (y) "Individual Defendants" means Gregory Reyes ("Reyes"), Antonio
2 Canova ("Canova"), Larry Sonsini ("Sonsini"), Seth Neiman ("Neiman") and Neal Dempsey
3 ("Dempsey").

4 (z) "Judgment" means the judgment approving the Settlement, to be entered
5 by the Court substantially in the form attached hereto as Exhibit B.

6 (aa) "KPMG" means KPMG LLP.

7 (bb) "KPMG's Counsel" means Sidley Austin LLP.

8 (cc) "Notice" means the Notice of Class Action, Proposed Settlement, Motion
9 for Attorneys' Fees and Fairness Hearing, which is to be sent to Class Members substantially in
10 the form attached hereto as Tab 1 to Exhibit A.

11 (dd) "Order for Notice and Hearing" means the order preliminarily approving
12 the Settlement and directing notice thereof to the Class, to be entered by the Court substantially
13 in the form attached hereto as Exhibit A.

14 (ee) "Parties" means Class Representatives and KPMG.

15 (ff) "Plaintiffs' Counsel" means the law firms of Nix, Patterson & Roach, LLP,
16 Class Counsel; Patton Roberts, PLLC, Class Counsel; Keil & Goodson P.C, additional counsel
17 for APERS; and Schiffrin Barroway Topaz & Kessler, LLP, additional counsel for ERIE.

18 (gg) "Proof of Claim" means the proof of claim form substantially in the form
19 attached hereto as Tab 2 to Exhibit A.

20 (hh) "Publication Notice" means the Summary Notice of Proposed Settlement
21 and Hearing for publication substantially in the form attached hereto as Tab 3 to Exhibit A.

22 (ii) "Related Parties" means each of KPMG's past or present directors,
23 officers, employees, partners, principals, members, insurers, co-insurers, re-insurers, controlling
24 shareholders, attorneys, advisors, accountants, auditors, personal or legal representatives,
25 predecessors, successors, parents, subsidiaries, divisions, joint ventures, assigns, spouses, heirs,
26 related or affiliated entities, or any entity in which KPMG has a controlling interest.

27 (jj) "Released Parties" means KPMG and the Related Parties.
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1 (kk) "Settled Claims" means and includes any and all claims, debts, demands,
2 controversies, obligations, losses, rights or causes of action or liabilities of any kind or nature
3 whatsoever (including, but not limited to, any claims for damages (whether compensatory,
4 special, incidental, consequential, punitive, exemplary or otherwise), injunctive relief,
5 declaratory relief, rescission or rescissionary damages, interest, attorneys' fees, expert or
6 consulting fees, costs, expenses, or any other form of legal or equitable relief whatsoever),
7 whether based on federal, state, local, statutory or common law or any other law, rule or
8 regulation, whether fixed or contingent, accrued or un-accrued, liquidated or unliquidated, at
9 law or in equity, matured or unmatured, whether class or individual in nature, including both
10 known claims and Unknown Claims (defined herein in ¶ 1(qq)) that: (i) have been asserted in
11 this Action by Class Representatives on behalf of the Class and its Class Members against any
12 of the Released Parties, or (ii) have been or could have been asserted in any forum by Class
13 Representatives, Class Members or any of them against any of the Released Parties, which arise
14 out of, relate to or are based upon the allegations, transactions, facts, matters, occurrences,
15 representations or omissions involved, set forth, or referred to in the Complaint and/or the
16 Amended Complaint. Settled Claims shall also include any claims, debts, demands,
17 controversies, obligations, losses, rights or causes of action that Class Representatives, Class
18 Members or any of them may have against the Released Parties or any of them which involve or
19 relate in any way to the defense of the Action or the Settlement of the Action. Notwithstanding
20 the foregoing, or any other provision contained in this Stipulation, Settled Claims shall not
21 include:

22 (i) any claims to enforce the Settlement, including, without limitation, any of
23 the terms of this Stipulation or orders or judgments issued by the Court in connection with the
24 Settlement;

25 (ii) any claims asserted by Persons who exclude themselves from the Class by
26 timely requesting exclusion in accordance with the requirements set forth in the Notice;

1 (iii) any claims, rights or causes of action that have been or could have been
2 asserted in the Derivative Actions and/or the Company Action; or

3 (iv) any and all claims that have been asserted under the Securities Act of 1933
4 and the Securities Exchange Act of 1934, or any other laws, for the allegedly wrongful conduct
5 complained of in *In re Brocade Communications Systems, Inc. Initial Public Offering Securities*
6 *Litigation*, 01 CV 6613 (SAS)(BSJ), as coordinated for pretrial purposes in *In re Initial Public*
7 *Offering Securities Litigation*, Master File No. 21 MC 92 (SAS), pending in the United States
8 District Court for the Southern District of New York.

9 (ll) “Settled Defendants’ Claims” means and includes any and all claims,
10 debts, demands, controversies, obligations, losses, costs, rights or causes of action or liabilities of
11 any kind or nature whatsoever (including, but not limited to, any claims for damages (whether
12 compensatory, special, incidental, consequential, punitive, exemplary or otherwise), injunctive
13 relief, declaratory relief, rescission or rescissionary damages, interest, attorneys’ fees, expert or
14 consulting fees, costs, expenses, or any other form of legal or equitable relief whatsoever),
15 whether based on federal, state, local, statutory or common law or any other law, rule or
16 regulation, whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law
17 or in equity, matured or unmatured, including both known claims and Unknown Claims, that
18 have been or could have been asserted in the Action or any forum by the Released Parties against
19 any of the Class Representatives, Plaintiffs’ Counsel, Class Members or their attorneys, which
20 arise out of or relate in any way to the institution, prosecution, or settlement of the Action.
21 Notwithstanding the foregoing, or any other provisions contained in this Stipulation, Settled
22 Defendants’ Claims shall not include any claims to the enforce the Settlement, including, without
23 limitation, any of the terms of this Stipulation or orders or judgments issued by the Court in
24 connection with the Settlement.

25 (mm) “Settlement” means the settlement contemplated by this Stipulation.

26 (nn) “Settlement Amount” means \$98,500.00.

27 (oo) “Stipulation” means this Stipulation and Agreement of Settlement.

1 (pp) "Taxes" means (i) any and all applicable taxes, duties and similar charges
2 imposed by a government authority (including any estimated taxes, interest or penalties) arising
3 in any jurisdiction, if any, with respect to the income or gains earned by or in respect of the
4 Gross Settlement Fund, including, without limitation, any taxes that may be imposed upon
5 KPMG or its counsel with respect to any income or gains earned by or in respect of the Gross
6 Settlement Fund for any period while it is held by the Escrow Agent during which the Gross
7 Settlement Fund does not qualify as a Qualified Settlement Fund for federal or state income tax
8 purposes; and (ii) any and all expenses, liabilities and costs incurred in connection with the
9 taxation of the Gross Settlement Fund (including without limitation, expenses of tax attorneys
10 and accountants).

11 (qq) "Unknown Claims" means any and all claims that any Class
12 Representative or Class Member does not know or suspect to exist and any and all claims that
13 KPMG does not know or suspect to exist in his, her or its favor at the time of the release of the
14 Released Parties which, if known by him, her or it, might have affected his, her or its settlement
15 with and release of, as applicable, the Released Parties, Class Representatives, and Class
16 Members, or might have affected his, her or its decision to object or not to object to this
17 Settlement. The Class Representatives, Class Members, and KPMG and each of them may
18 hereafter discover facts in addition to or different from those which he, she or it now knows or
19 believes to be true with respect to the subject matter of the Settled Claims and/or the Settled
20 Defendants' Claims. Nevertheless, with respect to any and all Settled Claims and Settled
21 Defendants' Claims, the Parties stipulate and agree that, upon the Effective Date, the Parties
22 shall expressly waive and each of the Class Members shall be deemed to have, and by operation
23 of the Judgment shall have, waived all provisions, rights and benefits of California Civil Code §
24 1542 and all provisions, rights and benefits conferred by any law of any state or territory of the
25 United States, or principle of common law, which is similar, comparable or equivalent to
26 California Civil Code § 1542. California Civil Code § 1542 provides:

1 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
2 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR**
3 **HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH**
4 **IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED**
5 **HIS OR HER SETTLEMENT WITH THE DEBTOR.**

6 The Parties expressly acknowledge, and the Class Members shall be deemed to have, and by
7 operation of the Judgment shall have, acknowledged that the waiver and release of Unknown
8 Claims constituting Settled Claims and/or Settled Defendants' Claims was separately bargained
9 for and a material element of the Settlement.

10 **SCOPE AND EFFECT OF SETTLEMENT**

11 2. The obligations incurred pursuant to this Stipulation shall be in full and final
12 disposition of the Action as to the Released Parties and any and all Settled Claims and Settled
13 Defendants' Claims.

14 3. (a) Upon the Effective Date, Class Representatives and all Class Members on
15 behalf of themselves, their personal representatives, heirs, executors, administrators, trustees,
16 successors and assigns, shall be deemed to have, and by operation of the Judgment shall have,
17 fully, finally and forever released, relinquished and discharged each and every one of the Settled
18 Claims against the Released Parties, whether or not any such Class Member or Class
19 Representative executes and delivers a Proof of Claim. Further, the Judgment will provide that,
20 upon the Effective Date, Class Representatives and all Class Members on behalf of themselves,
21 their personal representatives, heirs, executors, administrators, trustees, successors and assigns,
22 shall be deemed to have covenanted not to sue on, and shall forever be barred from suing on,
23 instituting, prosecuting, continuing, maintaining or asserting in any forum, either directly or
24 indirectly, on their own behalf or on behalf of any class or other person, any Settled Claim
25 against any of the Released Parties.

26 (b) Upon the Effective Date, KPMG, on behalf of itself and the Related
27 Parties, shall be deemed to have, and by operation of the Judgment shall have, fully, finally and
28 forever released, relinquished and discharged each and every one of the Settled Defendants'
Claims. Further, the Judgment will provide that, upon the Effective Date, KPMG, on behalf of

1 itself and the Related Parties, shall be deemed to have covenanted not to sue on, and shall forever
2 be barred from suing on, instituting, prosecuting, continuing, maintaining or asserting in any
3 forum, either directly or indirectly, on their own behalf or on behalf of any class or other person,
4 any Settled Defendants' Claim against Class Representatives, Class Members and their
5 respective counsel, or any of them.

6 **THE BAR ORDER**

7 4. The Judgment approving the Settlement shall include a Bar Order providing: In
8 accordance with 15 U.S.C. § 78u-4(f)(7)(A), any and all claims for contribution arising out of
9 any Settled Claim (i) by any person against KPMG, and (ii) by KPMG against any person, other
10 than a person whose liability has been extinguished by the settlement of KPMG, are hereby
11 permanently barred and discharged.

12 **SETTLEMENT CONSIDERATION**

13 5. In consideration for the release and discharge provided for in ¶ 3(a) hereof,
14 KPMG shall pay or cause to be paid the Settlement Amount by wire transfer into an interest
15 bearing account with the Escrow Agent within five (5) business days of entry of the Order for
16 Notice and Hearing.

17 6. (a) The Gross Settlement Fund shall be used solely for the purpose of
18 reimbursing Class Representatives and the Class in an amount not to exceed \$98,500 for the
19 costs of the Notice, Publication Notice, and administration costs referred to in ¶ 9(b) hereof.
20 Any sums required to be held in escrow hereunder shall be held by the Escrow Agent. All funds
21 held by the Escrow Agent shall be deemed to be in the custody of the Court until such time as the
22 funds are paid pursuant to this Stipulation and/or further order of the Court. The Escrow Agent
23 shall invest any funds in excess of U.S.\$100,000 in short-term United States Agency or Treasury
24 Securities (or a mutual fund invested solely in such instruments), and shall collect and reinvest
25 all interest accrued thereon. Any funds held in escrow in an amount of less than U.S.\$100,000
26 may be held in a bank account insured by the Federal Deposit Insurance Corporation ("FDIC").
27 The Parties agree that the Gross Settlement Fund is intended to be a Qualified Settlement Fund
28

1 within the meaning of Treasury Regulation § 1.468B-1, and that the Escrow Agent, as
2 administrator of the Gross Settlement Fund within the meaning of Treasury Regulation §
3 1.468B-2(k)(3), shall be responsible for filing tax returns and any other tax reporting for or in
4 respect of the Gross Settlement Fund and paying from the Gross Settlement Fund any Taxes
5 owed with respect to the Gross Settlement Fund. The Parties agree that the Gross Settlement
6 Fund shall be treated as a Qualified Settlement Fund from the earliest date possible, and agree to
7 any relation-back election required to treat the Gross Settlement Fund as a Qualified Settlement
8 Fund from the earliest date possible. KPMG agrees to provide promptly to the Escrow Agent the
9 statement described in Treasury Regulation § 1.468B-3(e).

10 (b) All Taxes shall be paid out of the Gross Settlement Fund, shall be
11 considered to be a cost of administration of the Settlement and shall be timely paid by the
12 Escrow Agent without prior Order of the Court. The Gross Settlement Fund or the Escrow
13 Agent shall, to the extent required by law, be obligated to withhold from any distributions any
14 funds necessary to pay Taxes including the establishment of adequate reserves for Taxes as well
15 as any amount that may be required to be withheld under Treasury Reg. § 1.468B-(1)(2) or
16 otherwise under applicable law in respect of such distributions. Further, the Gross Settlement
17 Fund shall indemnify and hold harmless the Released Parties and KPMG's Counsel for Taxes.

18 (c) None of KPMG, the Released Parties, or KPMG's Counsel shall have any
19 responsibility for or liability whatsoever with respect to (i) any act, omission or determination of
20 Plaintiffs' Counsel, the Escrow Agent or the Claims Administrator, or any of their respective
21 designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the
22 management, investment or distribution of the Gross Settlement Fund; (iii) the plan of allocation;
23 (iv) the determination, administration, calculation or payment of any claims asserted against the
24 Gross Settlement Fund; (v) any losses suffered by, or fluctuations in the value of, the Gross
25 Settlement Fund; or (vi) the payment or withholding of any Taxes, expenses and/or costs
26 incurred in connection with the taxation of the Gross Settlement Fund or the filing of any returns.

ADMINISTRATION

1
2 8. The Claims Administrator shall administer the Settlement subject to the
3 jurisdiction of the Court for all Class Members. KPMG shall cooperate in the administration of
4 the Settlement to the extent reasonably necessary to effectuate its terms.

5 9. (a) The Escrow Agent, acting solely in its capacity as escrow agent, shall be
6 subject to the jurisdiction of the Court.

7 (b) The Escrow Agent may pay from the Gross Settlement Fund all
8 reasonable costs and expenses (excluding attorney fees), up to the Settlement Amount,
9 reasonably incurred identifying and notifying the Class Members and effecting mailing of the
10 Notice and Proof of Claim and publication of the Publication Notice to the Class, and the
11 administration of the Settlement, including without limitation, the actual costs of printing and
12 mailing the Notice and Proof of Claim, publication of the Publication Notice, reimbursements to
13 nominee owners for forwarding the Notice and Proof of Claim to their beneficial owners, any
14 Taxes due, and the reasonable administrative expenses incurred and fees charged by the Claims
15 Administrator in connection with providing notice and processing the submitted claims.

16 (c) The Escrow Agent may rely upon any notice, certificate, instrument,
17 request, paper or other document reasonably believed by it to be genuine and to have been made,
18 sent or signed by an authorized signatory in accordance with this Stipulation, and shall not be
19 liable for (and will be indemnified from the Gross Settlement Fund and held harmless from and
20 against) any and all claims, actions, damages, costs (including reasonable attorneys' fees) and
21 expenses claimed against or incurred by the Escrow Agent for any action taken or omitted by it,
22 consistent with the terms hereof and those of any separate escrow agreements concerning the
23 Gross Settlement Fund, in connection with the performance by it of its duties pursuant to the
24 provisions of this Stipulation or order of the Court, except for its gross negligence or willful
25 misconduct. If the Escrow Agent is uncertain as to its duties hereunder, the Escrow Agent may
26 request that Class Representatives (and, prior to the Effective Date, KPMG) sign a document
27 which states the action or non-action to be taken by the Escrow Agent. In the event the
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1 Settlement is terminated, as provided for herein, indemnified amounts and expenses incurred by
2 the Escrow Agent in connection with this paragraph shall not be returned to the person(s) who
3 paid the Settlement Amount.

4 **TERMS OF ORDER FOR NOTICE AND HEARING**

5 10. (a) Promptly after this Stipulation has been fully executed, Plaintiffs' Counsel
6 shall apply to the Court for entry of an Order for Notice and Hearing, substantially in the form
7 annexed hereto as Exhibit A, which Order shall, among other provisions, preliminarily approve
8 the Settlement and direct notice thereof to the Class.

9 (b) The mailing of the Notice and publication of the Publication Notice shall
10 not occur until the Order for Notice and Hearing has been entered.

11 **TERMS OF ORDER AND FINAL JUDGMENT**

12 11. If the Settlement contemplated by this Stipulation is preliminarily approved by
13 the Court pursuant to the Order for Notice and Hearing, the Parties shall request that a Judgment
14 be entered in all material respects in the form annexed hereto as Exhibit B.

15 **EFFECTIVE DATE OF SETTLEMENT, WAIVER OR TERMINATION**

16 12. The "Effective Date" of the Settlement shall be the date when all the following
17 conditions of settlement shall have occurred:

- 18 (a) payment of the Settlement Amount pursuant to ¶5 herein;
- 19 (b) approval by the Court of the Settlement, following notice to the Class and
20 a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure;
- 21 (c) entry by the Court of a Judgment, in all material respects in the form set
22 forth in Exhibit B annexed hereto;
- 23 (d) the Judgment becomes Final, or, in the event that the Court enters a
24 judgment that differs from the Judgment in any material respect ("Alternative Judgment") and
25 none of the Parties elects to terminate this Settlement, such Alternative Judgment becomes Final;
26 and
- 27
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1 (e) expiration of the time to exercise the termination rights provided in ¶ 13
2 hereof.

3 13. Class Representatives and KPMG shall each have the right to terminate the
4 Settlement and thereby this Stipulation by providing written notice of their election to do so
5 (“Termination Notice”) to the other Party within thirty (30) days of any of the following: (a) the
6 Court declining to enter the Order for Notice and Hearing in any material respect; (b) the Court
7 declining to approve the Settlement as set forth in this Stipulation in any material respect; (c) the
8 Court declining to enter the Judgment in any material respect; (d) the date upon which the
9 Judgment is modified or reversed in any material respect by any level of appellate court; (e)
10 entry by the Court of an Alternative Judgment that differs from the Judgment in any material
11 respect; or (f) the date upon which any Alternative Judgment is modified or reversed in any
12 material respect by any level of appellate court. Class Representatives shall also have the right
13 to terminate the Settlement and thereby this Stipulation if the Settlement Amount is not paid
14 pursuant to this Stipulation. Notwithstanding any other provision or paragraph in this Stipulation,
15 no action or inaction by the Court or any appellate court relating solely to (i) any award of
16 attorneys’ fees and expenses and/or any award to Class Representatives for reimbursement of
17 costs or expenses, and/or (ii) the Plan of Allocation shall entitle the Parties to terminate the
18 Settlement or any part of this Stipulation.

19 14. Except as otherwise provided herein, in the event the Settlement is terminated
20 pursuant to this Stipulation, the Parties shall be deemed to have reverted to their respective status
21 in the Action immediately prior to January 2, 2007, and, except as otherwise expressly provided,
22 the Parties shall proceed in all respects as if this Stipulation and any related orders had not been
23 entered. In such event, Class Representatives shall not use any discovery previously obtained
24 from KPMG in any amended complaint against KPMG. Moreover, in such event, KPMG agrees
25 that all applicable statute of limitations have been tolled since this Action was filed. Furthermore,
26 within ten (10) business days following any termination of this Settlement, the Escrow Agent
27 shall pay to KPMG an amount equal to the Settlement Amount together with any interest or other
28

1 income earned thereon or in respect thereof while held in escrow, less any Taxes paid (as such
2 Taxes relate to the Settlement Amount), less any amounts required to be paid to the Escrow
3 Agent pursuant to the relevant escrow agreement.

4 **NO ADMISSION OF WRONGDOING**

5 15. This Stipulation, whether or not consummated, and any proceedings taken
6 pursuant to it:

7 (a) shall not be offered or received against the Released Parties as evidence of
8 or construed as or deemed to be evidence of any presumption, concession, or admission by the
9 Released Parties with respect to the truth of any fact alleged by any Class Member or the Class
10 Representatives or the validity of any claim that has been or could have been asserted in the
11 Action or in any litigation, or the deficiency of any defense that has been or could have been
12 asserted in the Action or in any litigation, or of any liability, negligence, fault, or wrongdoing of
13 the Released Parties;

14 (b) shall not be offered or received against the Released Parties as evidence of
15 a presumption, concession or admission of any fault, misrepresentation or omission with respect
16 to any statement or written document approved or made by the Released Parties;

17 (c) shall not be offered or received against the Released Parties as evidence of
18 a presumption, concession or admission with respect to any liability, negligence, fault or
19 wrongdoing in any other civil, criminal or administrative action or proceeding, other than such
20 proceedings as may be necessary to effectuate the provisions of this Stipulation; provided,
21 however, that if this Stipulation is approved by the Court, the Released Parties may refer to it to
22 effectuate the releases granted them hereunder;

23 (d) shall not be construed against the Released Parties as an admission or
24 concession that the consideration to be given hereunder represents the amount that could be or
25 would have been recovered after trial; and

26 (e) shall not be construed as or received in evidence as an admission,
27 concession or presumption against the Class Representatives or any of the Class Members that
28

1 any of their claims are without merit, or that any defenses asserted by KPMG has any merit, or
2 that damages recoverable under the Action would not have exceeded the Settlement Amount.

3 **MISCELLANEOUS PROVISIONS**

4 16. All of the exhibits attached hereto are hereby incorporated by reference as
5 though fully set forth herein.

6 17. The Parties intend the Settlement to be a final and complete resolution of all
7 disputes asserted or which could be asserted by the Class Members against the Released Parties
8 or any of them with respect to the Settled Claims. Accordingly, Class Representatives, on behalf
9 of themselves and the Class, and KPMG agree not to assert in any forum that the Action was
10 brought by the Class Representatives or any Class Member or defended by KPMG in bad faith or
11 without a reasonable basis. The Parties shall assert no claims of any violation of Rules 11 or 37
12 of the Federal Rules of Civil Procedure relating to the prosecution, defense, or settlement of the
13 Action. The Settling Parties affirm that they are aware of no facts or circumstances that would
14 give rise to any violations of Rules 11 or 37 of the Federal Rules of Civil Procedure relating to
15 this Action. The Parties shall request that the Court, in connection with its entry of the Judgment,
16 make specific findings of fact that the Class Representatives and Plaintiffs' Counsel initiated,
17 maintained and prosecuted the Action in good faith and in accordance with Plaintiffs' Counsel's
18 obligations under Rules 11 and 37 of the Federal Rules of Civil Procedure.

19 18. The Parties agree that the Settlement Amount and the other terms of the
20 Settlement were negotiated at arm's-length in good faith by the Parties, and reflect a settlement
21 that was reached voluntarily after consultation with experienced legal counsel.

22 19. Nothing in this Stipulation or the negotiations or proceedings relating to this
23 Stipulation and the Settlement is intended to or shall be deemed to constitute a waiver of any
24 applicable privilege or immunity.

25 20. This Stipulation may not be modified or amended, nor may any of its provisions
26 be waived, except by a writing signed by the Parties or their successors-in-interest.

1 21. The headings herein are used for the purpose of convenience only and are not
2 meant to have legal effect.

3 22. The administration and consummation of the Settlement as embodied in this
4 Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the
5 purpose of entering orders providing for awards of attorneys' fees and expenses to Plaintiffs'
6 Counsel, enforcing the terms of this Stipulation, and resolving any disputes that may arise in
7 connection with this Stipulation or the Settlement.

8 23. The waiver by one Party of any breach of this Stipulation by the other Party
9 shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

10 24. This Stipulation, its exhibits, and any related escrow agreements supersede all
11 prior agreements, and constitute the entire agreement, concerning the Settlement of the Action as
12 to the Released Parties and any and all Settled Claims and Settled Defendants' Claims. No
13 representations, warranties, or inducements have been made by or on behalf of any Party hereto
14 concerning this Stipulation and its exhibits other than those contained and memorialized in such
15 documents.

16 25. This Stipulation may be executed in one or more counterparts including by
17 signature transmitted by facsimile or scanned image. All executed counterparts and each of them
18 shall be deemed to be one and the same instrument.

19 26. This Stipulation shall be binding upon, and inure to the benefit of, the Parties
20 and their respective agents, executors, heirs, predecessors, successors and assigns.

21 27. All agreements made and orders entered during the course of the Action relating
22 to confidentiality of information shall survive the execution, performance, and/or termination of
23 this Stipulation.

24 28. The construction and interpretation of this Stipulation shall be governed by the
25 internal laws of the State of California without regard to conflicts of laws, except to the extent
26 that federal law of the United States requires that federal law governs.


1 29. This Stipulation shall not be construed more strictly against one Party than
2 another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel
3 for one of the Parties, it being recognized that it is the result of arm's-length negotiations
4 between the Parties and that all Parties have contributed substantially and materially to the
5 preparation of this Stipulation.

6 30. All counsel and any other person executing this Stipulation, any of the exhibits
7 hereto, or any related Settlement documents, warrant and represent that they have the full
8 authority to do so and that they have the authority to take appropriate action required or
9 permitted to be taken pursuant to the Stipulation to effectuate its terms.

10 31. The Parties agree to cooperate fully with one another in seeking Court approval
11 of the Order for Notice and Hearing, the Stipulation and the Settlement, and to promptly agree
12 upon and execute all such other documentation as may be reasonably required to obtain final
13 approval by the Court of the Settlement.

14 DATED: October 23, 2008

NIX, PATTERSON & ROACH, LLP

15 By: 
16 _____
17 Bradley E. Beckworth
18 Jeffrey J. Angelovich
19 Susan Whatley
20 Brad E. Seidel
21 205 Linda Drive
22 Daingerfield, TX 75638
23 Telephone: (903) 645-7333

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24 By: _____
25 Sean Rommel
26 2900 St. Michael Drive, Suite 400
27 Texarkana, TX 75505-6128
28 Telephone: (903) 334-7000

Co-Lead Counsel for Lead Plaintiff

1 29. This Stipulation shall not be construed more strictly against one Party than
2 another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel
3 for one of the Parties, it being recognized that it is the result of arm's-length negotiations
4 between the Parties and that all Parties have contributed substantially and materially to the
5 preparation of this Stipulation.

6 30. All counsel and any other person executing this Stipulation, any of the exhibits
7 hereto, or any related Settlement documents, warrant and represent that they have the full
8 authority to do so and that they have the authority to take appropriate action required or
9 permitted to be taken pursuant to the Stipulation to effectuate its terms.

10 31. The Parties agree to cooperate fully with one another in seeking Court approval
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13 approval by the Court of the Settlement.

14 DATED: October 23, 2008

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EXHIBIT A

Order for Notice
and Hearing

EXHIBIT A

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11 Co-Lead Counsel

Additional Counsel for Erie

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13
14
15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION

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19
20
21 **In re: BROCADE SECURITIES**
LITIGATION
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Consolidated Case No.: 3:05-CV-02042-CRB

ORDER FOR NOTICE AND HEARING

EXHIBIT A

1 WHEREAS, a consolidated class action is pending before this Court entitled: *In re:*
2 *Brocade Securities Litigation*, Consolidated Case No.: 3:05-CV-02042-CRB (the “Action”);

3 WHEREAS, following the dismissal of the claims of Lead Plaintiff and Class
4 Representative, Arkansas Public Employees Retirement System (“APERS”), against KPMG LLP
5 (“KPMG”) pursuant to an Order of the Court dated November 3, 2006, APERS reached an
6 agreement in principle to settle all claims in this Action against KPMG;

7 WHEREAS, after reaching the agreement to settle the Action with KPMG, APERS
8 continued to litigate the Action against defendants Brocade Communications Systems, Inc.
9 (“Brocade” or the “Company”), Gregory Reyes, Antonio Canova, Larry Sonsini, Seth Neiman,
10 and Neal Dempsey (collectively, “Individual Defendants,” and together with Brocade and
11 KPMG, the “Defendants”);

12 WHEREAS, on January 2, 2007, APERS filed its Amended Consolidated Class Action
13 Complaint (“Amended Complaint”) against Brocade and the Individual Defendants;

14 WHEREAS, APERS and Erie County Public Employees Retirement System (“ERIE”)
15 (together, “Class Representatives”) filed a motion for class certification on June 22, 2007;

16 WHEREAS, on October 12, 2007, the Court granted the motion for class certification
17 filed by APERS and ERIE, appointing them Class Representatives in the Action and certifying a
18 class composed of the following: all persons and entities who purchased or otherwise acquired
19 Brocade common stock between May 18, 2000 and May 15, 2005, inclusive, and who were
20 damaged thereby (the “Class”). Excluded from the Class are (i) Defendants; (ii) all officers,
21 directors, and partners of any Defendant and of any Defendant’s partnerships, subsidiaries, or
22 affiliates, at all relevant times; (iii) members of the immediate family of any of the foregoing
23 excluded parties; (iv) the legal representatives, heirs, successors, and assigns of any of the
24 foregoing excluded parties; and (v) any entity in which any of the foregoing excluded parties has
25 or had a controlling interest at all relevant times;¹

26 _____
27 ¹ The exclusions are listed in a slightly different format than presented in Class Representatives’
28 motion for class certification but do not differ in substance. For consistency and to make class

EXHIBIT A

1 WHEREAS, on or about May 30, 2008, Class Representatives reached an agreement in
2 principle to settle the remaining claims in the Action with Brocade;

3 WHEREAS, Class Representatives, Brocade, and the Individual Defendants executed a
4 Stipulation and Agreement of Settlement dated October 23, 2008 (“Brocade Stipulation”);

5 WHEREAS, Class Representatives and KPMG executed a Stipulation and Agreement of
6 Settlement dated October 23, 2008 (“KPMG Stipulation”);

7 WHEREAS, the Parties having presented the settlement of the Action to the Court for
8 preliminary approval, pursuant to Rule 23 of the Federal Rules of Civil Procedure, in accordance
9 with: (i) the Brocade Stipulation and (ii) the KPMG Stipulation (collectively, the “Stipulations”);
10 and

11 WHEREAS, the Stipulations, together with the exhibits thereto, set forth the terms and
12 conditions for the proposed settlement (i) with Brocade and the Individual Defendants (the
13 “Brocade Settlement”) and (ii) with KPMG (the “KPMG Settlement”) (together, the
14 “Settlement”) of the claims alleged in the Amended Complaint on the merits and with prejudice
15 as against all Defendants.

16 NOW, upon consent of Class Representatives (on behalf of themselves and the Class),
17 Brocade, the Individual Defendants and KPMG (collectively, the “Parties”), after review and
18 consideration of the Stipulations filed with the Court and the exhibits annexed thereto, and after
19 due deliberation and good cause appearing therefor,

20 IT IS HEREBY ORDERED that:

21 1. The Court, for purposes of this Order for Notice and Hearing (the “Notice Order”),
22 adopts all defined terms as set forth in the Stipulations unless otherwise defined herein.

23 2. The Court hereby preliminarily certifies, for purposes of effectuating the KPMG
24 Settlement, a class pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3) that is identical to the Class
25

26 notice less complex, the Court will adopt the wording and form of the foregoing exclusions from
27 the Class.
28

EXHIBIT A

1 previously certified, consisting of: all persons and entities who purchased or otherwise acquired
2 Brocade common stock between May 18, 2000 and May 15, 2005, inclusive, and who were
3 damaged thereby. Excluded from the Class are (i) Defendants; (ii) all officers, directors, and
4 partners of any Defendant and of any Defendant's partnerships, subsidiaries, or affiliates, at all
5 relevant times; (iii) members of the immediate family of any of the foregoing excluded parties;
6 (iv) the legal representatives, heirs, successors, and assigns of any of the foregoing excluded
7 parties; and (v) any entity in which any of the foregoing excluded parties has or had a controlling
8 interest at all relevant times. Also excluded from the Class are any putative members of the
9 Class who exclude themselves by timely requesting exclusion in accordance with the
10 requirements set forth in the Notice of Class Action, Proposed Settlement, Motion for Attorneys'
11 Fees and Fairness Hearing ("Notice") to be sent to the members of the Class pursuant to this
12 Notice Order.

13 3. For the Class certified for purposes of effectuating the KPMG Settlement, APERS
14 and ERIE are appointed as class representatives and Nix Patterson & Roach, LLP and Patton
15 Roberts, PLLC are appointed as class counsel.

16 4. With respect to the KPMG Settlement, the Court preliminarily finds and
17 concludes that the requirements of Fed. R. Civ. P. 23(a) and 23(b)(3) are satisfied as: (a) the
18 members of the Class are so numerous that joinder of all members of the Class is impracticable;
19 (b) there are questions of law and fact common to the Class that predominate over any individual
20 questions; (c) the claims of Class Representatives are typical of the claims of the Class; (d) Class
21 Representatives and Plaintiffs' Counsel (as defined in the Stipulations) have fairly and
22 adequately represented and protected the interests of all of the members of the Class; and (e) a
23 class action is superior to other available methods for the fair and efficient adjudication of the
24 controversy, considering: (i) the interests of the members of the Class in individually controlling
25 the prosecution of the separate actions, (ii) the extent and nature of any litigation concerning the
26 controversy already commenced by members of the Class, (iii) the desirability or undesirability

EXHIBIT A

1 of continuing the litigation of these claims in this particular forum, and (iv) the difficulties likely
2 to be encountered in the management of the class action.

3 5. Plaintiffs' Counsel are authorized to act on behalf of the Class with respect to all
4 acts required by, or which may be given pursuant to, the Stipulations, or such other acts that are
5 reasonably necessary to consummate the proposed Settlement set forth in the Stipulations.

6 6. The Court appoints Epiq Systems Inc. ("Epiq") as Claims Administrator to
7 supervise and administer the notice and claims procedures in connection with the Settlement.
8 The Parties and their counsel shall not be liable for any act or omission of the Claims
9 Administrator.

10 7. The Escrow Agent is authorized and directed: (a) to prepare any tax returns and
11 any other tax reporting for or in respect of the Gross Settlement Fund created in the Brocade
12 Settlement and the Gross Settlement Fund created in the KPMG Settlement (together, the "Gross
13 Settlement Fund"); (b) to pay from the Gross Settlement Fund any Taxes owed with respect to
14 the Gross Settlement Fund; and (c) to otherwise perform all obligations with respect to Taxes
15 and any reporting or filings in respect thereof as contemplated by the Stipulations, without
16 further order of the Court.

17 8. The Court preliminarily approves: (i) the Settlement of the Action as set forth in
18 the Stipulations, and (ii) the proposed Plan of Allocation described in the Notice, subject to the
19 right of any member of the Class to challenge the fairness, reasonableness, and adequacy of the
20 Settlement, Stipulations or the proposed Plan of Allocation, and to show cause, if any exists, why
21 a final judgment dismissing the Action based on the Stipulations should not be ordered herein
22 after due and adequate notice to the Class has been given in conformity with this Order.

23 9. Pursuant to Fed. R. Civ. P. Rule 23(e), a hearing (the "Fairness Hearing") shall be
24 held on _____, 2009, at _____.m., in the United States District Court for the Northern
25 District of California, San Francisco Division, the Honorable Charles R. Breyer presiding, to:

26 a. determine whether the Settlement should be approved by the Court as fair,
27 reasonable, adequate, and in the best interests of the Class;

EXHIBIT A

1 b. determine whether the Judgment should be entered pursuant to the
2 Stipulations, *inter alia*, dismissing the Action against Defendants with prejudice, extinguishing
3 and releasing all Settled Claims as set forth in ¶¶ 3(a) and 3(b) of the Stipulations and barring all
4 claims as set forth in and subject to ¶ 4 of the Stipulations;

5 c. determine whether the Class preliminarily certified for purposes of
6 effectuating the KPMG Settlement should be finally certified pursuant to Rules 23(a) and (b) of
7 the Federal Rules of Civil Procedure;

8 d. determine whether to approve the Plan of Allocation;

9 e. rule on Plaintiffs' Counsel's application for an award of attorneys' fees
10 and reimbursement of expenses, and any request of Class Representatives for reimbursement of
11 reasonable costs and expenses, as provided for in ¶ 10 of the Brocade Stipulation; and

12 f. rule on such other matters as the Court may deem appropriate.

13 10. The Court reserves the right to adjourn the Fairness Hearing or any aspect thereof,
14 including the consideration of the application for attorneys' fees and reimbursement of expenses,
15 without further notice of any kind to Class Members.

16 11. The Court reserves the right to approve the Settlement at or after the Fairness
17 Hearing with such modification as may be consented to by the Parties without further notice to
18 the Class.

19 12. The Claims Administrator shall make reasonable efforts to identify all persons
20 who are members of the Class, including beneficial owners whose Brocade Securities are held by
21 banks, brokerage firms, or other nominees. Brocade shall provide to the Claims Administrator
22 Brocade's shareholder lists, as it or its transfer agent may possess, as appropriate for providing
23 notice to the Class, in a format designated by the Claims Administrator, if possible, for mailings,
24 within three (3) calendar days following the Court's entry of this Notice Order. Brocade shall
25 bear any costs associated with providing this information to the Claims Administrator.

26 13. Within thirty (14) calendar days after the entry of this Notice Order, the Claims
27 Administrator shall cause a copy of the Notice and the Proof of Claim and Release form ("Proof
28

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1 of Claim”), substantially in the forms of Tabs 1 and 2 attached hereto, to be mailed by United
2 States mail, postage pre-paid, to all reasonably ascertainable members of the Class, at their last
3 known address appearing in the transfer records maintained by or on behalf of the Company (the
4 “Notice Date”).

5 14. Pursuant to the Notice, each nominee who receives the Notice shall either: (1)
6 send the Notice and Proof of Claim to Class Members for which they act as nominee by first
7 class mail within ten (10) calendar days after the nominee receives the Notice; or (2) send a list
8 of the names and addresses of such beneficial owners to the Claims Administrator within ten (10)
9 calendar days after the nominee receives the Notice and, in the event of the latter, the Claims
10 Administrator shall send by first class mail the Notice to all Class Members who are on the list
11 received from the nominee within seven (7) calendar days. The Claims Administrator shall, if
12 requested, reimburse banks, brokerage houses, or other nominees for their reasonable
13 out-of-pocket expenses incurred in providing the Notice to beneficial owners who are Class
14 Members, which expenses would not have been incurred except for the sending of such Notice,
15 subject to further order of this Court with respect to any dispute concerning such compensation.
16 Plaintiffs’ Counsel shall file with the Court and serve upon counsel for Defendants no later than
17 seven (7) calendar days prior to the Fairness Hearing an affidavit or declaration describing the
18 efforts taken to comply with this Order and stating that the mailings have been completed in
19 accordance with the terms of this Order.

20 15. Within fourteen (14) calendar days of the Notice Date, Plaintiffs’ Counsel shall
21 publish a Publication Notice, substantially in the form of Tab 3 attached hereto, once in *The Wall*
22 *Street Journal* and once over the PR Newswire. Plaintiffs’ Counsel shall file with the Court and
23 serve upon counsel for Defendants no later than seven (7) calendar days prior to the Fairness
24 Hearing an affidavit or declaration stating that the Publication Notice has been published in
25 accordance with the terms of this Order.

26 16. The form and method of notice specified herein is the best notice practicable,
27 shall constitute due and sufficient notice to all persons and entities entitled to receive such notice,
28

EXHIBIT A

1 and fully satisfy the requirements of due process, Rule 23 of the Federal Rules of Civil
2 Procedure and 15 U.S.C. §78u-4(a)(7).

3 17. Any member of the Class who timely and properly objects to the Settlement, the
4 Plan of Allocation, Plaintiffs' Counsel's application for attorneys' fees and reimbursement of
5 expenses, and/or Class Representatives' application for reimbursement of reasonable costs and
6 expenses directly relating to their representation of the Class, or who otherwise wishes to be
7 heard, may appear in person or by his, her, or its attorney at the Fairness Hearing and present
8 evidence or argument that may be proper or relevant; provided, however, that no person or entity
9 other than the Parties and their counsel shall be heard, and no papers, briefs, pleadings, or other
10 documents submitted by any person or entity shall be considered by the Court unless, no later
11 than fourteen (14) calendar days prior to the date of the Fairness Hearing, such person or entity
12 files with the Court and serves upon counsel listed below: (i) a written notice of intention to
13 appear containing the person or entity's name, address, telephone number, and signature; (ii) a
14 statement of such person or entity's objections to any matters before the Court; (iii) the grounds
15 therefor or the reasons that such person or entity desires to appear and be heard, as well as all
16 documents or writings such person or entity desires the Court to consider; and (iv) the amount of
17 Brocade common stock purchased, otherwise acquired, or sold during the Class Period, the
18 prices paid or received, the date of each transaction and the amount or number of shares of
19 Brocade common stock held on May 18, 2000. Such filings shall be served upon the Court and
20 the following counsel:

21 **Plaintiffs' Counsel:**

22 Bradley E. Beckworth
23 Jeffrey J. Angelovich
24 Nix Patterson & Roach, LLP
25 205 Linda Drive
26 Daingerfield, TX 75638

25 **Counsel for Brocade:**

26 John C. Dwyer
27 Cooley Godward & Kronish, L.L.P.
28 Five Palo Alto Square

1 3000 El Camino Real
2 Palo Alto, CA 94306-2155

3 **Counsel for Gregory Reyes:**

4 Richard Marmaro
5 Skadden Arps Slate Meagher & Flom L.L.P.
6 300 S. Grand Ave., Ste. 3400
7 Los Angeles, CA 90071

8 **Counsel for Larry W. Sonsini:**

9 Evan R. Chesler
10 Cravath Swaine & Moore, L.L.P.
11 825 8th Ave.
12 Worldwide Plaza
13 New York, NY 10019

14 **Counsel for Antonio Canova:**

15 Norman J. Blears
16 Hogan & Hartson LLP
17 525 University Avenue, 2nd Floor
18 Palo Alto, CA 94301

19 **Counsel for Seth D. Neiman:**

20 Jeffrey Rudman
21 Wilmer Cutler Pickering Hale & Dorr, L.L.P.
22 60 State St.
23 Boston, MA 02109

24 **Counsel for Neal Dempsey:**

25 Richard M. Phillips
26 Kirkpatrick & Lockhart Preston Gates Ellis, L.L.P.
27 55 Second St., Ste. 1700
28 San Francisco, CA 94105

Counsel for KPMG LLP:

Michael C. Kelley
Sidley Austin LLP
555 West Fifth Street
Los Angeles, California 90013
(213) 896-6000

18. Any person or entity falling within the definition of the Class may, upon request, be excluded from the Settlement. Any such person or entity must submit to the Claims Administrator a request for exclusion (“Request for Exclusion”) no later than fourteen days prior

EXHIBIT A

1 to the date of Fairness Hearing. A Request for Exclusion must be signed by the person
2 requesting exclusion and state: (i) the name, address, and telephone number of the person or
3 entity requesting exclusion; (ii) the person or entity's purchases, acquisitions and sales of
4 Brocade common stock made during the Class Period, the prices paid or received, the date of
5 each transaction and the amount of Brocade common stock held as of the beginning of the Class
6 Period on May 18, 2000; and (iii) that the person or entity wishes to be excluded from the Class.
7 Copies of all Requests for Exclusion, including supporting documentation submitted therewith,
8 that are received by the Claims Administrator shall be delivered to Plaintiffs' Counsel and
9 Defendants' counsel within two (2) business days of receipt thereof. All persons or entities who
10 submit valid and timely Requests for Exclusion in the manner set forth in this paragraph shall
11 have no rights under the Stipulations, shall not participate in the Settlement or otherwise be
12 bound by the terms of the Stipulations and shall not share in any distribution of the Settlement
13 Amount.

14 19. Any Class Member who wishes to participate in the Settlement and receive a
15 distribution from the Net Settlement Fund created by the Settlement must submit a valid and
16 properly executed Proof of Claim to the Claims Administrator, at the address indicated in the
17 Notice, postmarked not later than one hundred and twenty (120) calendar days following the
18 Notice Date. Such deadline may be further extended by Court order. Proofs of Claim shall be
19 deemed to have been submitted when postmarked, if mailed by first class, or registered or
20 certified mail, postage prepaid, addressed in accordance with the instructions given in the Proof
21 of Claim. All other Proofs of Claim shall be deemed to have been submitted at the time they are
22 actually received by the Claims Administrator. To be valid, a Proof of Claim must: (i) be
23 completed in a manner that permits the Claims Administrator to determine the eligibility of the
24 claim as set forth in the Proof of Claim; (ii) include the release by the claimant of all Settled
25 Claims as set forth in the Stipulations; and (iii) be signed with an affirmation that the information
26 is true and correct. As part of the Proof of Claim, each Class Member shall submit to the
27 jurisdiction of the Court with respect to the claim submitted, and shall (subject to the effectuation
28

EXHIBIT A

1 of the Settlement reflected in the Stipulations) agree to and enter into the releases as provided in
2 the Stipulations. All Class Members who do not submit valid and timely Proofs of Claim shall
3 be forever barred from receiving any payments pursuant to the Settlement, but will in all other
4 respects be bound by all of the terms of the Stipulations and the Settlement, including the
5 releases provided for therein, and all of the terms of the Judgment, if entered, whether favorable
6 or unfavorable, and will be barred from bringing any action against any Released Party (as
7 defined in the Stipulations) concerning or relating to the Settled Claims, unless such persons or
8 entities request exclusion from the Class in a timely and proper manner, as provided herein.

9 20. If this Settlement, including any amendment made in accordance with ¶ 37 of the
10 Brocade Stipulation or ¶ 20 of the KPMG Stipulation, is not approved by the Court or is
11 terminated or otherwise does not become Final for any reason whatsoever, the Settlement
12 (including any modification thereof) made with the consent of the Parties as provided for in the
13 Stipulations, class certification in connection with the KPMG Settlement, and any actions taken
14 or to be taken in connection therewith (including this Order and any judgment entered herein),
15 shall be terminated and shall become void and of no further force and effect except that any
16 obligations or provisions relating to payment of costs and expenses incurred in connection with
17 notice and claims administration and any other obligation or provision that is expressly
18 designated in the Stipulations to survive termination of the Settlement shall survive termination
19 of the Stipulations and Settlement.

20 21. All proceedings in the Action, other than such proceedings as may be necessary to
21 carry out the terms and conditions of the Settlement, are hereby stayed and suspended until
22 further order of this Court. Pending final approval of the Settlement, Class Representatives and
23 all members of the Class are barred and enjoined from commencing, prosecuting or asserting in
24 any forum, either directly or indirectly, on their own behalf or on behalf of any class or other
25 person, any Settled Claim against any of the Released Parties.

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1 22. The Stipulations, including any provisions contained in the Stipulations, any
2 negotiations, statements, or proceedings in connection therewith, or any action undertaken
3 pursuant thereto:

4 (a) shall not be offered or received against any Released Party as evidence of
5 or construed as or deemed to be evidence of any presumption, concession, or admission by any
6 Released Party with respect to the truth of any fact alleged by any Class Member or the Class
7 Representatives or the validity of any claim that has been or could have been asserted in the
8 Action or in any other action, or the deficiency of any defense that has been or could have been
9 asserted in the Action or in any other action, or of any liability, negligence, fault, or wrongdoing
10 of any Released Party;

11 (b) shall not be offered or received against any Released Party as evidence of
12 a presumption, concession or admission of any fault, misrepresentation or omission with respect
13 to any statement or written document approved or made by any Released Party;

14 (c) shall not be offered or received against any Released Party as evidence of
15 a presumption, concession or admission with respect to any liability, negligence, fault or
16 wrongdoing in any civil, criminal or administrative action or proceeding, other than such
17 proceedings as may be necessary to effectuate the provisions of the Stipulation; provided,
18 however, that if the Stipulations are approved by the Court, the Released Parties may refer to
19 them to effectuate the releases and other liability protection granted them hereunder;

20 (d) shall not be construed against any Released Party as an admission or
21 concession that the consideration to be given pursuant to the Stipulations represents the amount
22 that could be or would have been recovered after trial; and

23 (e) shall not be construed as or received in evidence as an admission,
24 concession or presumption against Class Representatives or any of the Class Members that any
25 of their claims are without merit, or that any defenses asserted by Defendants have any merit, or
26 that damages recoverable under the Action would not have exceeded the Settlement Amount.

EXHIBIT A

1 23. Any Party making submissions to the Court in support of approval of the
2 Settlement or the Plan of Allocation, or in support of any application for an award of attorneys'
3 fees and reimbursement of expenses or for reimbursement of costs and expenses of Class
4 Representatives, shall do so by seven (7) calendar days before the date scheduled for the Fairness
5 Hearing.

6 24. The Court authorizes payment out of the Gross Settlement Fund of the notice and
7 administrative expenses described in ¶ 9 of the Stipulations.

8 25. The passage of title and ownership of the Gross Settlement Fund to the Escrow
9 Agent in accordance with the terms of the Stipulations is approved. No person or entity that is
10 not a Class Member or counsel for Class Representatives shall have any right to any portion of,
11 or in the distribution of, the Gross Settlement Fund or Net Settlement Fund unless otherwise
12 ordered by the Court or otherwise provided in the Stipulations.

13 26. The Court further retains jurisdiction over this Action to consider all further
14 matters arising out of or connected with the Settlement reflected in the Stipulations, including
15 enforcement of the releases provided for in the Stipulations.

16 27. The Court may, for good cause, extend any of the deadlines set forth in this Order
17 without further notice to Class Members.

18
19 SIGNED this _____ day of _____, 2008.

20
21 **THE HONORABLE CHARLES R. BREYER**
22 **UNITED STATES DISTRICT JUDGE**
23
24
25
26
27
28

EXHIBIT A

Tab 1

Notice of Class Action, Proposed Settlement,
Motion for Attorneys' Fees
and Fairness Hearing

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE BROCADE COMMUNICATIONS,
SYSTEMS, INC. SECURITIES LITIGATION

) Consolidated Case No: 3:05-CV-02042-CRB

) This document relates to: All Actions

) Judge: The Honorable Charles R. Breyer

NOTICE OF CLASS ACTION, PROPOSED SETTLEMENT, MOTION FOR ATTORNEYS' FEES AND FAIRNESS HEARING

If You Purchased Or Otherwise Acquired The Common Stock Of Brocade Communications Systems, Inc. ("Brocade") Between May 18, 2000 And May 15, 2005, Inclusive (the "Class Period"), You May Be A Member Of The Class In This Action And Entitled To Share In A \$160,098,500 Settlement.

A federal court authorized this Notice. This is not a solicitation from a lawyer.

If you belong to the Class and this Settlement is approved, your legal rights will be affected whether you act or not. Read this Notice carefully to see what your rights and options are in connection with this Settlement.¹

- On _____, 2008, the Court preliminarily approved two settlements in the above-captioned action (the "Action"): (1) a settlement between plaintiffs, Arkansas Public Employees Retirement System and Erie County Public Employees Retirement System (collectively, "Class Representatives"), on behalf of themselves and the Class, and defendant Brocade and its former officers and/or directors Gregory Reyes, Antonio Canova, Larry W. Sonsini, Seth D. Neiman, and Neal Dempsey (collectively, "Individual Defendants"); and (2) a settlement between Class Representatives, on behalf of themselves and the Class, and defendant KPMG LLP ("KPMG") (Brocade, KPMG and the Individual Defendants are collectively referred to herein as "Defendants"; Class Representatives and Defendants are collectively referred to herein as the "Parties"). If finally approved, these settlements will resolve all claims of the Class in this litigation. Both settlements are collectively referred to herein as the "Settlement."
- In exchange for the payment by Brocade of \$160 million in cash ("Brocade Settlement Amount") and the payment by KPMG of up to \$98,500.00 to reimburse the Class for a material portion of the reasonable costs of notice and claims administration (the "KPMG Settlement Amount"), the Class shall release any and all claims it has against the Released Parties (as defined below in the Answer to Question 2). The total cash amount of \$160,098,500.00, plus interest, is referred to herein as the "Settlement Fund." The Settlement Fund, less attorneys' fees, expense reimbursements and other costs approved by the Court ("Net Settlement Fund"), will be distributed solely to Class Members who submit acceptable Proofs of Claim.
- The Class consists of all persons and entities who purchased or otherwise acquired Brocade common stock ("Brocade Securities") during the Class Period, and who were damaged thereby. Excluded from the Class are (i) the Defendants; (ii) all officers, directors, and partners of any Defendant and of any Defendant's partnerships, subsidiaries, or affiliates, at all relevant times; (iii) members of the immediate family of any of the foregoing excluded parties; (iv) the legal representatives, heirs, successors, and assigns of any of the foregoing excluded parties; and (v) any entity in which any of the foregoing excluded parties has or had a controlling interest at all relevant times. Also excluded from the Class are any putative members of the Class who exclude themselves by timely requesting exclusion in accordance with the requirements set forth in this Notice.
- Class Representatives and Defendants disagree on the amount of damages, if any, that could have been recovered if the Class prevailed on each claim at trial. Class Representatives estimate that the approximate average amount of recoverable damages to members of the Class who purchased or acquired Brocade Securities were this case to go to trial would be approximately \$0.808 per share based upon an estimate of 282 million damaged Brocade shares purchased or acquired during the Class Period. Defendants do not believe that they violated the federal securities laws, deny all allegations of wrongdoing asserted against them, and deny that any of Brocade's public statements were materially false or misleading. They have also asserted affirmative defenses to the claims alleged in this case. Accordingly, Defendants assert that they are not liable to the Class for any amount of damages.
- Class Representatives estimate that if all Class Members make a claim against the Settlement Fund, the average payment to Class Members will be \$0.567 per damaged share of Brocade common stock. Of this amount, fees and expenses requested by the attorneys and reimbursement of costs and expenses of Class Representatives will not exceed \$0.144 per damaged share of Brocade common stock. **Please note that these amounts are only estimates.**

¹ This Notice summarizes and is qualified in its entirety by (i) the Stipulation and Agreement of Settlement dated October 23, 2008, by and among Class Representatives, on behalf of themselves and the Class, Brocade and the Individual Defendants (the "Brocade Stipulation"); and (ii) the Stipulation and Agreement of Settlement dated October 23, 2008, by and among Class Representatives, on behalf of themselves and the Class, and KPMG (the "KPMG Stipulation" and, collectively with the Brocade Stipulation, the "Stipulations"). The Stipulations set forth the terms of the Settlement. Please refer to the Stipulations for a complete description of the terms and provisions thereof. A copy of each of the Stipulations is available at www.brocadeclasssettlement.com.

- Counsel for Class Representatives (“Class Counsel”) intend to seek an award of attorneys’ fees of up to 25% of the Settlement Fund after deduction of expenses, plus interest earned at the same rate earned by the Class on the Settlement Fund. Class Counsel have been litigating this case for the past three years without any payment whatsoever, advancing millions of dollars in time and expense. Class Counsel will also request reimbursement of the expenses they have incurred in connection with the prosecution of this Action, which will not exceed \$1,200,000.00. In addition, Class Representatives intend to seek reimbursement of the reasonable costs and expenses they incurred relating to their representation of the Class, which will not exceed \$25,000.00 in the aggregate.
- In reaching the Settlement, Class Representatives and Defendants have avoided the cost, time and uncertainty of a trial, and Class Representatives have agreed to the Settlement to avoid the risk of the dismissal of some or all of the claims of the Class against Defendants.
- Further information regarding the Settlement and this Notice may be obtained by contacting the following Class Counsel: Jeffrey J. Angelovich, Esquire, or Bradley E. Beckworth, Esquire, Nix, Patterson & Roach, LLP, 205 Linda Drive, Daingerfield, Texas 75638, Telephone: 903-645-7333.

| YOUR LEGAL RIGHTS AND OPTIONS | |
|---|---|
| Submit a Proof of Claim Form (by _____, 2009) | If the Settlement is approved and you are a member of the Class, you may be entitled to receive a payment only if you submit a Proof of Claim form. A copy of the Proof of Claim form is enclosed, and is also available at www.brocadeclasssettlement.com . If you remain in the Class, you will be bound by the Settlement and will give up any “Settled Claims” you may have against the “Released Parties” (as more fully described below in Answer to Question No. 2), so it is in your interest to submit a Proof of Claim form. |
| Exclude Yourself (by _____, 2009) | If you do not wish to be a member of the Class, you <i>must</i> exclude yourself (as described below in Answer to Question No. 13) and you will not receive any payment from the Settlement Fund. You cannot bring or be part of another lawsuit or arbitration against any of the Released Parties based on any Settled Claims unless you exclude yourself from the Class. |
| Object (by _____, 2009) | If you do not exclude yourself, but you wish to object to any part of the Settlement, you may (as discussed below in Answer to Question No. 18) write to the Court about your objections. |
| Attend the Fairness Hearing (to be held on _____, 2009) | If you have submitted a written objection to any aspect of the Settlement to the Court, you may (but do not have to) attend the Fairness Hearing and present your objections to the Court at that hearing. |
| Do Nothing | If you are a Class Member and you do not either submit a Proof of Claim form or request exclusion, you will be bound by the Settlement (including the release of the Released Parties), you will receive no payment, and you will not be able to bring or pursue any Settled Claims in any other lawsuit or arbitration. |

- These rights and options – **and the deadlines to exercise them** – are explained in this Notice. Please note the date of the Fairness Hearing – currently scheduled for _____, 2009 – is subject to change without further notice. If you plan to attend the hearing, you should check with the Court and www.brocadeclasssettlement.com to be sure no change to the date and time of the hearing has been made.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made to Class Members only if the Court approves the Settlement and that approval is upheld in any appeals that may be filed.

WHAT THIS NOTICE CONTAINS

Summary of Settlement.....

Basic Information.....

1. Why did I get this Notice package?
2. What is this lawsuit about?
3. Why is this case a class action?
4. Why is there a Settlement?
5. How do I know whether I am part of the Class?
6. Are there exceptions to being included?
7. I am still not sure whether I am included.

The Settlement Benefits - What You Receive

8. What does the Settlement provide?
9. How much will my payment be?
10. How can I get a payment?
11. When would I get my payment?
12. What is the effect of my remaining in the Class?

- 13. How do I get out of the Settlement?
- 14. If I don't exclude myself from the Class in connection with the Action, can I sue the Released Parties for the same thing later?
- 15. If I exclude myself, can I get money from this Settlement in connection with the Action?

The Lawyers Representing You

- 16. Do I have a lawyer in the case?
- 17. How will the lawyers be paid?

Objecting to the Settlement, Plan of Allocation or the Attorneys' Fees Award

- 18. How do I tell the Court that I do not like any aspect of the Settlement?
- 19. What's the difference between objecting and excluding?
- 20. When and where will the Court decide whether to approve the Settlement?
- 21. Do I have to come to the hearing?
- 22. May I speak at the hearing?

If You Do Nothing

- 23. What happens if I do nothing at all?

Getting More Information

- 24. Are there more details about the Settlement?
- 25. How do I get more information?

Special Notice to Securities Brokers and other Nominees

Basic Information

1. Why did I get this Notice package?

You or someone in your family may have purchased or otherwise acquired Brocade common stock between May 18, 2000 and May 15, 2005, inclusive. The Court caused this Notice to be sent to you because, if you fall within this group and are not otherwise excluded from the Class, your rights will be affected and you have a right to know about the proposed Settlement, and about all of your options, before the Court decides whether to approve the Settlement. If the Court approves it, and after any objections and appeals are resolved, the Court-appointed Claims Administrator (Epiq Systems, Inc.) will cause payments to be made to Class Members who submit acceptable Proofs of Claim.

This Notice package describes the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of this Action is the United States District Court for the Northern District of California, San Francisco Division. The people who are prosecuting this action on behalf of the Class are called "Class Representatives" and the people or companies they are suing are called "Defendants." This case, also called the "Action," is known as *In re Brocade Communications Systems, Inc. Securities Litigation*, Consolidated Case No. 3:05-CV-02042-CRB.

2. What is this lawsuit about?

Brocade manufactures, among other things, products designed to help information technology organizations manage and profit from their data assets. Brocade is incorporated under the laws of Delaware with its principal place of business in San Jose, California. KPMG was Brocade's external auditor during a portion of the Class Period.

Beginning on May 19, 2005, six putative class actions alleging securities laws violations were filed against Brocade and its officers and directors. These actions were consolidated before the United States District Court for the Northern District of California, San Francisco Division. In January, 2006, the Court appointed the Arkansas Public Employees Retirement System ("APERS" or "Lead Plaintiff") as Lead Plaintiff and approved APERS' selection of Nix, Patterson & Roach, LLP and Patton Roberts, PLLC as "Lead Counsel" in the Action.

On April 14, 2006, APERS filed a 105-page Consolidated Class Action Complaint (the "Complaint") against Brocade, certain officers and directors of Brocade, and KPMG. APERS alleged that Brocade and certain of its officers and directors made false and misleading public statements and omitted material information about Brocade's finances relating to stock option grants and stock option based compensation in violation of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") during the Class Period. APERS alleged that KPMG misled investors by falsely stating that Brocade's financial statements were prepared according to Generally Accepted Accounting Principles and that KPMG had conducted its audits according to Generally Accepted Auditing Standards. Defendants have denied violating any laws and have raised or could raise numerous defenses, including that the statements were not false and misleading, or even if they were, that Defendants were unaware of their falsity. In addition, Defendants have consistently argued that the Class was not damaged as a result of the challenged statements, but rather, that the alleged misstatements were not material and that other market forces caused the value of Brocade Securities to decline during the Class Period.

The Class Claims Have Been Aggressively Litigated

Before filing the Complaint, APERS undertook an extensive investigation of the events surrounding the alleged fraud, which included the review and analysis of SEC filings, press releases, public statements, news articles and other publications, records of

Brocade's analyst conference calls and securities analysts' reports. The investigation also included in-person and telephonic interviews of former Brocade employees.

APERS filed the Complaint on or about April 14, 2006.

On or about July 14, 2006, Defendants filed numerous Motions to Dismiss the Complaint, primarily asserting that the Complaint failed to sufficiently plead (1) that Defendants' actions were intentional or deliberately reckless; and (2) that Defendants' conduct caused Class members' losses.

On or about September 29, 2006, APERS filed a Motion for Partial Modification of the PSLRA Discovery Stay to obtain certain documents and information from Brocade.

On November 3, 2006, the Court denied the Motions to Dismiss filed by Brocade, Gregory Reyes and Antonio Canova. The Court granted the Motions to Dismiss filed by KPMG, Seth D. Neiman, Neal Dempsey, Mark Leslie, Larry W. Sonsini, Christopher B. Paisley, and Nicholas G. Moore, but permitted APERS the opportunity to re-plead its claims against the dismissed Defendants by January 2, 2007. The Court also granted APERS' Motion for Partial Modification of the PSLRA Discovery Stay.

After the November 3, 2006 hearing, APERS and KPMG entered into settlement discussions. To facilitate these discussions, KPMG agreed that APERS would not be required to file an amended complaint against KPMG by the January 2, 2007 deadline established by the Court. On June 4, 2007, APERS and KPMG reached an agreement in principle to resolve APERS' and the Class' claims against KPMG.

On January 2, 2007, APERS filed its Amended Consolidated Class Action Complaint ("Amended Complaint"). Through the Amended Complaint, APERS asserted additional allegations against Seth D. Neiman, Neal Dempsey and Larry W. Sonsini. APERS did not reassert claims against KPMG, Mark Leslie, Christopher B. Paisley, or Nicholas G. Moore as defendants in the Action. Thereafter, the Parties engaged in substantial discovery.

On March 9, 2007, Defendants Neiman, Dempsey and Sonsini filed a Motion to Dismiss the Amended Complaint, primarily asserting that the Amended Complaint again failed to sufficiently plead that Neiman's, Dempsey's and Sonsini's actions were intentional or deliberately reckless. APERS responded to the Motion to Dismiss.

On June 22, 2007, APERS and the Erie County Pennsylvania Employees Retirement System ("ERIE") filed a motion to certify a class consisting of all persons and entities who purchased or otherwise acquired Brocade Securities during the Class Period, and who were damaged thereby, excluding certain persons and entities affiliated with Defendants.

On August 23, 2007, Brocade filed a motion for summary judgment asserting that, as a matter of law, APERS could not establish the essential element of loss causation. By agreement of the Parties, the briefing on that motion was stayed.

On August 24, 2007, APERS filed its Motion for Partial Summary Judgment against Gregory Reyes. APERS sought a judgment that, as a matter of law, Reyes was liable for the thirty-seven misrepresentations identified in the Amended Complaint. APERS' motion was based on Gregory Reyes' August 7, 2007 criminal conviction for federal securities fraud.

On August 24, 2007, the Court heard oral argument on the Motion to Dismiss filed by Neiman, Dempsey and Sonsini. The Court denied the motion on August 27, 2007.

On October 12, 2007, the Court held oral argument on APERS' and ERIE's Motion for Class Certification. By Order dated October 12, 2007, the Court granted APERS' and ERIE's Motion for Class Certification and certified the Action to proceed as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, appointed APERS and ERIE "Class Representatives," and appointed the law firms of Nix, Patterson & Roach, LLP and Patton Roberts, PLLC "Class Counsel."

On October 12, 2007, the Court also heard argument on APERS' motion for partial summary judgment as to Gregory Reyes' liability regarding the thirty-seven misrepresentations identified in the Amended Complaint. The Court granted APERS' motion in part and denied it in part. Specifically, the Court found that, as a matter of law, Gregory Reyes (1) made material misrepresentations in Brocade's Forms 10-K filed with the U.S. Securities and Exchange Commission ("SEC") for the 2001, 2002 and 2003 fiscal years, (2) intentionally or with deliberate recklessness, and (3) that the misrepresentations occurred in connection with the purchase or sale of a security.

On January 18, 2008, Class Representatives filed a Motion for Partial Summary Judgment asserting that, as a matter of law, Gregory Reyes was acting within the course and scope of employment at Brocade when he signed Brocade's Forms 10-K filed with the SEC for the 2001, 2002 and 2003 fiscal years. The Court granted Class Representatives' motion on May 13, 2008.

Class Representatives undertook extensive discovery with respect to the merits of the Action. This discovery included the analysis of approximately three million pages of documents produced by Defendants and third parties which related to, among other things, transactions discussed in the Complaint and/or the Amended Complaint, the criminal investigation, trial, and SEC investigation of former Brocade CEO Gregory Reyes and former employee Stephanie Jensen, public disclosures, internal budgets and forecasts, communications with analysts and the public regarding financial prospects, internal policies regarding insider trading transactions, records regarding insider trades and executive compensation. Class Counsel and their accounting and damages consultants have literally spent thousands of hours reviewing, analyzing and summarizing these documents for use in prosecuting the Action. Class Counsel also retained multiple experts to assist in the prosecution of the Action.

During the course of litigation and discovery, Class Representatives and Brocade participated in three formal face to face mediation sessions: twice under the supervision of former United States District Judge Layn R. Phillips and once under the supervision of both Judge Phillips and former United States District Judge Charles Renfrew. Class Representatives and Brocade also participated in numerous mediation sessions via telephone conference with Judge Phillips. The parties and mediator(s) carried out these mediation efforts, unsuccessfully, for over 18 months. Nevertheless, the Parties continued to negotiate in good faith until an agreement in principle was reached on May 30, 2008. The Brocade Settlement is the product of several years of extensive negotiations between Class Representatives and Defendants and their experienced counsel and was achieved through numerous rounds of mediation conducted before Judge Phillips and Judge Renfrew working in conjunction therewith.

Release

If the Court approves the Settlement, all Class Members, on behalf of themselves their personal representatives, heirs, executors, administrators, trustees, successors and assigns, will release any "Settled Claims" they have as against the "Released Parties." This means that if you remain a member of the Class, any and all "Settled Claims" you have against the "Released Parties" will be released and discharged regardless of whether you file a Proof of Claim, and regardless of whether you are found eligible to share in the Settlement Fund.

"Settled Claims" means and includes any and all claims, debts, demands, controversies, obligations, losses, rights or causes of action or liabilities of any kind or nature whatsoever (including, but not limited to, any claims for damages (whether compensatory, special, incidental, consequential, punitive, exemplary or otherwise), injunctive relief, declaratory relief, rescission or rescissionary damages, interest, attorneys' fees, expert or consulting fees, costs, expenses, or any other form of legal or equitable relief whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or un-accrued, liquidated or unliquidated, at law or in equity, matured or unmatured, whether class or individual in nature, including both known claims and Unknown Claims that: (i) have been asserted in the Action by Class Representatives on behalf of the Class and its Class Members against any of the Released Parties, or (ii) have been or could have been asserted in any forum by Class Representatives, Class Members or any of them against any of the Released Parties, which arise out of, relate to or are based upon the allegations, transactions, facts, matters, occurrences, representations or omissions involved, set forth, or referred to in the Complaint and/or the Amended Complaint. Settled Claims shall also include any claims, debts, demands, controversies, obligations, losses, rights or causes of action that Class Representatives, Class Members or any of them may have against the Released Parties or any of them which involve or relate in any way to the defense of the Action or the Settlement of the Action. Notwithstanding the foregoing, or any other provision contained in the Brocade Stipulation and/or the KPMG Stipulation, Settled Claims shall not include:

- (i) any claims to enforce the Settlement, including, without limitation, any of the terms of the Brocade Stipulation and/or the KPMG Stipulation or orders or judgments issued by the Court in connection with the Settlement;
- (ii) any claims asserted by persons who exclude themselves from the Class by timely requesting exclusion in accordance with the requirements set forth in this Notice;
- (iii) any claims, rights or causes of action that have been or could have been asserted by Brocade or on its behalf in (i) the action styled *Brocade Communications Systems, Inc. v. Reyes et al.*, Case No. 3:05-CV-02233-CRB, pending in the United States District Court, Northern District of California; (ii) the action styled *In re Brocade Communications Systems, Inc. Derivative Litigation*, Case No. 1:05-CV-041683, pending in the Superior Court of California, County of Santa Clara; (iii) the action styled *Barbour et al. v. Reyes et al.*, Case No. 3:08-cv-02029-CRB, pending in the United States District Court, Northern District of California; (iv) the action styled *Jha v. Reyes et al.*, Case No. 3:05-cv-02652-CRB, pending in the United States District Court, Northern District of California; (v) the action styled *Pratt v. Reyes et al.*, Case No. 3:05-cv-02372-CRB, pending in the United States District Court, Northern District of California; and (vi) the action styled *Galluscio v. Reyes et al.*, Case No. 3:05-cv-02235, pending in the United States District Court, Northern District of California; or
- (iv) any and all claims that have been asserted under the Securities Act of 1933 and the Securities Exchange Act of 1934, or any other laws, for the allegedly wrongful conduct complained of in *In re Brocade Communications Systems, Inc. Initial Public Offering Securities Litigation*, 01 CV 6613 (SAS)(BSJ), as coordinated for pretrial purposes in *In re Initial Public Offering Securities Litigation*, Master File No. 21 MC 92 (SAS), pending in the United States District Court for the Southern District of New York.

NOTICE REGARDING OTHER PENDING LITIGATION: If you chose to participate in this Settlement and DO NOT EXCLUDE YOURSELF FROM THIS ACTION, you will give up any rights you may have to relief in any other pending or future action against the Released Parties arising out of the conduct set forth in the Complaint and/or the Amended Complaint. At the time this Notice was issued, the Parties were aware of only one such action, the action styled *Huang et al. v. Reyes et al.*, Case No. 1:07-CV-097163, currently pending in the Superior Court of California, County of Santa Clara (the "Huang Action"). However, there may be other such actions. The Huang Action asserts claims against Gregory Reyes, Stephanie Jensen, Antonio Canova, Nicholas G. Moore, David L. House, Seth D. Neiman, Christopher B. Paisley and Neil Dempsey relating to Brocade's historical stock options practices, and seeks to certify a class consisting of all holders of Brocade common stock who are being and who will be harmed by the conduct alleged in that action. While Class Representatives and Class Counsel take no position regarding the likelihood of success in the Huang Action, Brocade intends to file a demurrer seeking to have the Huang Action dismissed in its entirety and, as with all litigation, significant risks exist. IF YOU DO NOT EXCLUDE YOURSELF FROM THIS ACTION (as described below in Answer to Question No. 13), YOU WILL BE GIVING UP ANY AND ALL RIGHTS TO RELIEF, IF ANY, OBTAINED IN THE HUANG ACTION OR ANY OTHER SUCH ACTIONS.

"Settled Defendants' Claims" means and includes any and all claims, debts, demands, controversies, obligations, losses, costs, rights or causes of action or liabilities of any kind or nature whatsoever (including, but not limited to, any claims for damages (whether compensatory, special, incidental, consequential, punitive, exemplary or otherwise), injunctive relief, declaratory relief, rescission or rescissionary damages, interest, attorneys' fees, expert or consulting fees, costs, expenses, or any other form of legal or equitable relief whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or

contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, including both known claims and Unknown Claims, that have been or could have been asserted in the Action or any forum by the Released Parties against any of the Class Representatives, Class Counsel, Class Members or their attorneys, which arise out of or relate in any way to the institution, prosecution, or settlement of the Action. Notwithstanding the foregoing, or any other provision contained in the Brocade Stipulation and/or the KPMG Stipulation, Settled Defendants' Claims shall not include any claims to enforce the Settlement, including, without limitation, any of the terms of the Stipulations, orders or judgments issued by the Court in connection with the Settlement.

"Unknown Claims" means any and all claims that any Class Representative or Class Member does not know or suspect to exist and any and all claims that Brocade, any Individual Defendant or KPMG does not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties which, if known by him, her or it, might have affected his, her or its settlement with and release of, as applicable, the Released Parties, Class Representatives, and Class Members, or might have affected his, her or its decision to object or not to object to the Settlement. The Class Representatives, Class Members, Brocade, the Individual Defendants and KPMG (the "Parties"), and each of them may hereafter discover facts in addition to or different from those which he, she or it now knows or believes to be true with respect to the subject matter of the Settled Claims and/or the Settled Defendants' Claims. Nevertheless, with respect to any and all Settled Claims and Settled Defendants' Claims, the Parties have stipulated and agreed that, upon the Effective Date, the Parties shall expressly waive and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have, waived all provisions, rights and benefits of California Civil Code § 1542 and all provisions rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to California Civil Code § 1542. California Civil Code § 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Parties have expressly acknowledged, and the Class Members shall be deemed to have, and by operation of the Judgment shall have acknowledged, that the waiver and release of Unknown Claims constituting Settled Claims and/or Settled Defendants' Claims was separately bargained for and a material element of the Settlement.

"Released Parties" means Brocade Communications Systems, Inc. and its subsidiaries, affiliates, or successors (collectively "Brocade"); Gregory Reyes, Antonio Canova, Larry W. Sonsini, Seth D. Neiman and Neal Dempsey (collectively "Individual Defendants"); KPMG LLP; and each of Brocade's, the Individual Defendants' and KPMG's past or present directors, officers, employees, partners, principals, members, insurers, co-insurers, re-insurers, controlling shareholders, attorneys, advisors, accountants, auditors, personal or legal representatives, predecessors, successors, parents, subsidiaries, divisions, joint ventures, assigns, spouses, heirs, related or affiliated entities, any entity in which Brocade, an Individual Defendant or KPMG has a controlling interest, any member of any Individual Defendant's immediate family, or any trust of which any Individual Defendant is the settlor or which is for the benefit of any member of an Individual Defendant's immediate family.

A copy of the each of the Brocade Stipulation and the KPMG Stipulation is available at no charge on the Internet at www.brocadeclasssettlement.com.

3. Why is this case a class action?

In a class action, one or more plaintiffs called class representatives sue on behalf of people who have similar claims. All of the individuals and entities on whose behalf the plaintiffs are suing are class members. One court resolves the issues for all class members, except for those who choose to exclude themselves from the class.

Here, United States District Judge Charles R. Breyer is presiding over the Action. In this Action, the Court appointed the Arkansas Public Employees Retirement System and the Erie County Pennsylvania Employees Retirement System as "Class Representatives."

4. Why is there a Settlement?

The Court has not reached a final judgment as to whether the Class has proved its claims under the Securities Exchange Act of 1934 against Defendants. It would likely take several more years before a trial on the merits is held, final judgment is entered, and appeals are exhausted. Instead, Class Representatives and Defendants have agreed to resolve the lawsuit. In reaching the Settlement, they have avoided the risk, cost and time of a trial, and Class Representatives have avoided any further delay in bringing this Action to a resolution. In addition, as with any litigated case, Class Representatives would face an uncertain outcome if this Action went to trial. On the one hand, a trial could result in a verdict greater than the Settlement. On the other hand, Defendants have many defenses that they can be expected to assert, and a trial could result in a verdict lower than Class Representatives have obtained, or even no recovery at all for Class Representatives and the Class. Based on these factors and others, Class Representatives and their attorneys in this case believe the Settlement is best for all Class Members.

5. How do I know whether I am part of the Class?

To see if you will receive money from the Settlement Fund, you first must determine whether you are a Class Member. The Class consists of the following individuals and entities, subject to certain exceptions (described in the Answer to Question 6): *All persons and entities who purchased or otherwise acquired Brocade common stock during the Class Period and who were damaged thereby.*

6. Are there exceptions to being included?

You are not a Class Member if you are (i) a Defendant; (ii) an officer, director, or partner of any Defendant or of any Defendant's partnerships, subsidiaries, or affiliates at all relevant times; (iii) a member of the immediate family of any of the foregoing excluded parties; (iv) a legal representative, heir, successor, or assign of any of the foregoing excluded parties; or (v) an entity in which any of the foregoing excluded parties has or had a controlling interest.

Also, you are not a Class Member if you exclude yourself from the Class by submitting a valid and timely request for exclusion in accordance with the requirements set forth in this Notice. The procedure for requesting exclusion from the Class is described below in the Answer to Question No. 13, "How do I get out of the Settlement?"

In addition, you are not a Class Member if you previously settled an actual or threatened lawsuit or arbitration with Defendants and released all of Defendants from further claims concerning the purchase or acquisition of Brocade Securities.

If one of your mutual funds owns shares of Brocade, that alone does not make you a Class Member. You may contact your broker to see whether you have purchased or otherwise acquired Brocade Securities during the Class Period.

7. I am still not sure whether I am included.

If you are still not sure whether you are included, you can ask for help, which will be provided to you at no cost. You can call the Claims Administrator at 1-877-507-4370, or write to the following address:

In Re Brocade Securities Litigation Settlement
c/o Epiq Systems, Inc.
Claims Administrator
P.O. Box 3266
Portland, OR 97208

Or you can fill out and return the Proof of Claim form to see whether you qualify.

The Settlement Benefits - What You Receive

8. What does the Settlement provide?

Pursuant to the Brocade Settlement, Brocade deposited \$160,000,000.00 into an interest bearing escrow account on _____, 2008. Pursuant to the KPMG Settlement, KPMG deposited \$98,500.00 into the same interest bearing account on _____, 2008.

The Settlement, if approved, will result in the dismissal of the Amended Complaint as against Brocade and the Individual Defendants and the release by all Class Members of all the Settled Claims against the Released Parties, as defined above in the Answer to Question No. 2. The Net Settlement Fund will be distributed in accordance with the provisions of the Plan of Allocation, which is explained below in the Answer to Question No. 9, to the Class Members who file timely and valid Proof of Claim forms following the procedures set forth in this Notice and on the Proof of Claim form.

9. How much will my payment be?

Your share of the Net Settlement Fund will depend on the number of valid claim forms that Class Members submit, how many Brocade Securities you bought during the Class Period, and when you bought and/or sold (or whether you retained) any such Brocade Securities.

Here is how it works:

- Class Representatives and their expert consultants have prepared a Plan of Allocation that provides instructions for the Claims Administrator to determine each Class Member's proportionate share of the Net Settlement Fund.
- The Plan of Allocation provides a mathematical formula for determining the amount of money or "Recognized Claim" that will be paid to "Authorized Claimants."
- The mathematical formula is based in part on the Class's contention that the prices of Brocade common stock were artificially inflated during the Class Period and attempts to approximate the overall amount of damages that a Class Member might have

received had the Action gone to trial and the Class prevailed. It then utilizes that figure as a basis for weighing the claims of one Class Member against another for purposes of determining an appropriate methodology for dividing up the Net Settlement Fund among Class Members.

- To calculate whether you had a net gain or net loss on your transactions in Brocade common stock, four factors are considered: (1) the price you paid for the stock; (2) the price at which you sold the stock if sold during the Class Period or in the 90 days following the end of the Class Period (or the 90 day average closing price for the 90 days following the conclusion of the Class Period if you did not sell); (3) the amount by which Class Representatives' experts have determined the stock was, in their view, "inflated" on the date of your purchase; and (4) the amount by which Class Representatives' experts have determined the stock was, in their view, "inflated" on the date of your sale (that number is \$0 if you did not sell by the end of the Class Period).
- Because you are entitled to make a claim only for losses on Brocade common stock that you may have incurred due to the Defendants' conduct alleged in the Action, you may have a claim for either (a) the change in inflation between your purchase and sale dates (or the end of the Class Period if you did not sell) or (b) the amount you actually lost, whichever is less.
- The Plan of Allocation, which is attached to this Notice as Exhibit A, provides a detailed explanation of how this method works.
- Class Representatives will share in the Net Settlement Fund on the same basis and to the same extent as all other Authorized Claimants, although they will also separately seek reimbursement for the reasonable time and expenses incurred in representing the Class.
- Each valid claim will be allocated a proportionate share of the Net Settlement Fund based on the Authorized Claimant's Recognized Claim compared to the Total Recognized Claims of all Class Members who submit valid Proof of Claim forms.
- Class Members who do not file valid and timely Proof of Claim forms will not share in the Net Settlement Fund.
- Class Members who exclude themselves from the Class will not share in the Net Settlement Fund.
- Distributions will not be sent to Authorized Claimants until after the Fairness Hearing, after all claims have been processed and after the Settlement has become effective in accordance with its terms. It takes a significant amount of time for these events to occur and thus, payments will not be sent until this process is fully completed and approved by the Court.
- In the event that there are un-cashed distribution checks, after efforts authorized by the Court have been made to locate authorized claimants, subsequent redistributions will be calculated and paid to any Authorized Claimant who would receive more than \$10.00 until such time as re-distributions are no longer economically viable. At that time, the remaining funds will be donated to certain non-profit 501(c)(3) entities to be designated by Class Counsel.
- Class Representatives estimate that, if all Class Members make a claim, the average payment will be \$0.567 per damaged share of Brocade common stock purchased or acquired during the Class Period. Of these amounts, fees and expenses will be requested of up to \$0.144 per damaged share of Brocade common stock purchased or acquired the Class Period. **Please note that these amounts are only estimates.**
- The Plan of Allocation may be modified in connection with, among other things, a ruling by the Court.

If you have questions about the tax consequences of participating in the Settlement, you should consult with your own tax advisor.

10. How can I get a payment?

To qualify for a settlement payment, you **must** send in a Proof of Claim form. A Proof of Claim form is attached to this Notice. You also may get a Proof of Claim form on the Internet at www.brocadeclasssettlement.com or by calling the Claims Administrator. Read the instructions carefully, fill out the form, include all the documents the form asks for, sign the form, and mail it postmarked no later than _____, 2009. Please note that all Proof of Claim forms must be signed and returned to the Claims Administrator by the above date in order to receive any payment from the Net Settlement Fund.

11. When would I get my payment?

Payment to Class Members is contingent on the Court's approval of the Settlement and on such approval becoming final and no longer subject to any appeals to any court. If Judge Breyer approves the Settlement, there still might be appeals. Appeals, if any, will take time, perhaps more than a year.

The Net Settlement Fund will be distributed by the Claims Administrator as soon as possible after final approval has been obtained for the Settlement (which includes exhaustion of any appeals). As noted above, the resolution of any appeal of the final approval may take several years. In addition, processing of the Proofs of Claim requires significant time to complete.

Anyone who sends in a Proof of Claim form can receive information about the progress of the Settlement by visiting the website at www.brocadeclasssettlement.com, or by calling 1-877-507-4370 or writing to: In Re Brocade Securities Litigation Settlement, c/o Epiq Systems, Inc., Claims Administrator, P.O. Box 3266, Portland, Oregon 97208-3266.

12. What is the effect of my remaining in the Class?

Unless you exclude yourself from the Class, you will be a Class Member and will be bound by all orders and judgments entered by the Court regarding the Settlement. If the Settlement is approved, you will not be able to sue, continue to sue, or be part of any other lawsuit or arbitration against any of the Released Parties concerning any of the Settled Claims. You will be bound by the Settlement (including the release of the Settled Claims) whether or not you submit a Proof of Claim form and/or receive a payment under the Settlement.

13. How do I get out of the Settlement?

To get out of the Settlement, you must exclude yourself from the Class. To exclude yourself from the Class, you must send a letter by mail to the Claims Administrator saying that you want to be excluded from the Class in *In re Brocade Securities Litigation*. If you wish to exclude yourself, be sure to include in your letter your name, address, telephone number, and signature, and mail your exclusion request postmarked no later than _____, 2008 to:

In Re Brocade Securities Litigation Settlement
c/o Epiq Systems, Inc.
Exclusions
P.O. Box 3266
Portland, Oregon 97208-3266

Requests for exclusion must also list the amount of Brocade common stock purchased, otherwise acquired, or sold during the Class Period, the prices paid or received, the date of each transaction and the amount or number of Brocade Securities held as of the beginning of the Class Period on May 18, 2000.

You cannot exclude yourself on the website, by telephone or by e-mail. **If you do not follow these procedures – including meeting the date for exclusion set out above – you will not be excluded from the Class, and you will be bound by all of the orders and judgments entered by the Court regarding the Settlement.**

If you ask to be excluded, you will not receive a Settlement payment, and you cannot object to the Settlement. You will not be legally bound by anything that happens in this lawsuit. You will also not participate in any distribution of the Net Settlement Fund.

14. If I don't exclude myself from the Class in connection with the Action, can I sue the Released Parties for the same thing later?

No. Unless you exclude yourself from the Class in connection with the Action, you give up any right to sue any or all of the Released Parties for any Settled Claims. If you have a pending lawsuit or arbitration against Brocade or any of its officers and directors or any other Released Parties, speak to the lawyer representing you in that case immediately. You must exclude yourself from this Class to continue your own lawsuit or arbitration against any of the Released Parties. Remember, your request for exclusion must be postmarked no later than _____, 2009.

15. If I exclude myself, can I get money from this Settlement in connection with the Action?

No. If you exclude yourself, do not send in a Proof of Claim form to ask for money in connection with the Action. If you exclude yourself from the Class, you may be able to sue, continue to sue, or be part of a different lawsuit or arbitration against the Released Parties.

The Lawyers Representing You

16. Do I have a lawyer in the case?

The Court has appointed the law firms of Nix, Patterson & Roach, LLP and Patton Roberts, PLLC to represent Class Representatives and all other Class Members in the Action. These lawyers are called Class Counsel. You will not be charged directly by these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

17. How will the lawyers be paid?

Class Counsel intends to seek an award of attorneys' fees of up to 25% of the Settlement Fund after deduction of expenses. Class Counsel has been litigating this case for the past three years without any payment whatsoever. At the Fairness Hearing, Class Counsel will also seek reimbursement of the expenses incurred in connection with the prosecution of this Action, which amount will not exceed \$1,200,000.00. Class Representatives intend to seek an award of their reasonable costs and expenses (including lost wages) they incurred relating to the representation of the Class, which amount will not exceed \$25,000.00.

Objecting to the Settlement, Plan of Allocation or the Attorneys' Fees Award

You can tell the Court that you do not agree with the Settlement or some part of it.

18. How do I tell the Court that I do not like any aspect of the Settlement?

If you are a Class Member and you do not exclude yourself, you can object to the Settlement if you do not like any part of it. You can give reasons why you think the Court should not approve the Settlement, Plan of Allocation, request for attorneys' fees and reimbursement of expenses, or request for reimbursement of the reasonable costs and expenses of Class Representatives relating to their representation of the Class.

To object, you must send a letter or other filing saying that you object to the proposed Settlement in *In re Brocade Communications Systems, Inc. Securities Litigation*, Consolidated Case No. 3:05-CV-02042-CRB. You must include your name, address, telephone number, signature, and the reasons you object. You must also list the amount of Brocade common stock purchased, otherwise acquired, or sold during the Class Period, the prices paid or received, the date of each transaction and the amount or number of shares of Brocade common stock held as of the beginning of the Class Period on May 18, 2000. Your written objection must be served on one of the Class Counsel and each Defendants' Counsel listed below and **must be received** by them no later than _____, 2009:

Class Counsel

Jeffrey J. Angelovich, Esq.
Bradley E. Beckworth, Esq.
Nix, Patterson & Roach, LLP
205 Linda Drive
Daingerfield, TX 75638

Defendants' Counsel

Counsel for Brocade Communications Systems, Inc.:

John C. Dwyer
Cooley Godward Kronish LLP
Five Palo Alto Square
3000 El Camino Real
Palo Alto, CA 94306-2155

Counsel for Gregory Reyes:

Richard Marmaro
Skadden Arps Slate Meagher & Flom L.L.P.
300 S. Grand Ave., Ste. 3400
Los Angeles, CA 90071

Counsel for Larry W. Sonsini:

Evan R. Chesler
Cravath Swaine & Moore, L.L.P.
825 8th Ave.
Worldwide Plaza
New York, NY 10019

Counsel for Antonio Canova:

Norman J. Blears
Hogan & Hartson LLP
525 University Avenue, 2nd Floor
Palo Alto, CA 94301

Counsel for Seth D. Neiman:

Jeffrey Rudman
Wilmer Cutler Pickering Hale & Dorr, L.L.P.
60 State St.
Boston, MA 02109

Counsel for Neal Dempsey:

Richard M. Phillips
Kirkpatrick & Lockhart Preston Gates Ellis, L.L.P.
55 Second St., Ste. 1700
San Francisco, CA 94105

Counsel for KPMG LLP:

Michael C. Kelley
Sidley Austin LLP

555 West Fifth Street
 Los Angeles, California 90013
 (213) 896-6000

You must also file your objection with the Clerk of the United States District Court for the Northern District of California, San Francisco Division. The address is: Clerk of the U.S. District Court for the Northern District of California, San Francisco Division, United States Courthouse, 450 Golden Gate Avenue, 16th Floor, San Francisco, CA 94102. The Clerk **must** receive your objection no later than _____, 2009.

19. What's the difference between objecting and excluding?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you are a Class Member. Excluding yourself is telling the Court that you do not want to be part of the Class. If you exclude yourself from the Class, you have no basis to object, because the Settlement no longer affects you. If you do not exclude yourself from the Class, you will remain a member of the Class and will be bound by the terms of the Brocade Stipulation and the KPMG Stipulation (including the releases contained therein) and all orders and judgments entered by the Court regarding the Settlement regardless of whether the Court accepts or denies your objection.

20. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing on _____, 2009 at the United States District Court for the Northern District of California, San Francisco Division, 450 Golden Gate Avenue, 19th Floor, Courtroom 8, San Francisco, CA 94102. At this hearing, the Court will consider whether the Settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. After the Fairness Hearing, the Court will decide whether to approve the Settlement and the Plan of Allocation. The Court will also rule on the request for attorneys' fees and expenses and request for reimbursement of the reasonable costs and expenses of Class Representatives relating to their representation of the Class. We do not know how long these decisions will take.

21. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court might have. But you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as it is received on time, it will be before the Court when the Court considers whether to approve the Settlement as fair, reasonable and adequate. You also may pay your own lawyer to attend the Fairness Hearing, but attendance is not necessary.

22. May I speak at the hearing?

If you are a Class Member who has not requested to be excluded from the Class, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter or other paper called a "Notice of Intention to Appear at Fairness Hearing in *In re Brocade Communications Systems, Inc. Securities Litigation*." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be served on the counsel listed above and must be filed with the Clerk of the Court at the address in the Answer to Question No. 18 no later than _____, 2009. You cannot speak at the Fairness Hearing if you exclude yourself from the Class.

If You Do Nothing

23. What happens if I do nothing at all?

If you are a Class Member and do nothing, you will not receive any payment in connection with the Settlement. However, you will still be bound by the Settlement. Even if you receive no payment, you will not be able to start a lawsuit or arbitration, continue a lawsuit or arbitration, or be part of any other lawsuit or arbitration against any of the Released Parties based on any Settled Claims unless you exclude yourself.

Getting More Information

24. Are there more details about the Settlement?

This Notice summarizes the Settlement. The complete Settlement is set out in the Stipulations. You may obtain copies of the Stipulations, as well as other relevant documents, from the settlement website for free at www.brocadeclasssettlement.com or you may request copies by writing to *In Re Brocade Securities Litigation Settlement*, c/o Epiq Systems, Inc., Claims Administrator, P.O. Box 3266, Portland, Oregon 97208-3266. If you elect to obtain copies from a source other than the free website, there may be a charge for

copying and mailing such documents. The Stipulations are also filed in *In re Brocade Communications, Inc. Securities Litigation*, Consolidated Case No. 3:05-cv-2042-CRB, with the Clerk of the U.S. District Court for the Northern District of California, San Francisco Division, United States Courthouse, 450 Golden Gate Avenue, 16th Floor, San Francisco, CA 94102, and may be obtained from the Clerk's office directly. Further information regarding the Action and this Notice may be obtained by contacting Class Counsel at the address provided in the Answer to Question 18 above.

25. How do I get more information?

You can visit the website at www.brocadeclasssettlement.com, where you will find answers to common questions about the Settlement, the Proof of Claim form, plus other information to help you determine whether you are a Class Member and whether you are eligible for payment. You can also call 1-877-507-4370 toll free or write to In Re Brocade Securities Litigation Settlement, c/o Epiq Systems, Inc., Claims Administrator, P.O. Box 3266, Portland, Oregon 97208-3266.

SPECIAL NOTICE TO SECURITIES BROKERS AND OTHER NOMINEES

The Court has ordered that if you purchased or otherwise acquired Brocade Securities during the Class Period as nominee for a beneficial owner, then within ten (10) calendar days after you receive this Notice, you must either: (a) send a copy of this Notice and the accompanying Proof of Claim by first class mail to all such beneficial owners; or (b) provide a list of the names and addresses of such beneficial owners to the Claims Administrator so that the Claims Administrator can provide them with a copy of this Notice and a Proof of Claim form.

EXHIBIT A

PLAN OF ALLOCATION

1. The following Plan of Allocation is designed to fairly allocate the proceeds of the \$160,098,500 Gross Settlement Fund,¹ less all taxes, approved costs, fees and expenses (the "Net Settlement Fund"). The Net Settlement Fund shall be distributed to Class Members (or the representative of such Class Members including, without limitation, agents, administrators, executors, heirs, predecessors, successors, affiliates (as defined in 17 C.F.R. Part 210.1-02.b) and assigns) who submit a Proof of Claim in such form and manner, and within such time, as the Court shall prescribe ("Authorized Claimants").

2. This Plan of Allocation reflects the contention of the Class that because of misrepresentations and omissions about Brocade's financial condition and prospects, the price of Brocade common stock was inflated artificially during the Class Period (May 18, 2000 through and including May 15, 2005).

3. The Court has not made any finding that the Settling Defendants are liable to the Class or that the Class has suffered any compensable damages, nor has the Court made any finding that the payments allowed under this Plan of Allocation are an accurate measure of damages. If the Settlement is not approved, the Class Representatives are not bound by the Estimated Inflation amounts utilized in connection with this Plan of Allocation.

4. The Claims Administrator shall determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's "Recognized Claim" from transactions in Brocade common stock during the entire Class Period. **The Recognized Claim formulas set forth below are not intended to be an estimate of the amount that a Class Member might have been able to recover after a trial; nor is the Recognized Claim an estimate of the amount that will be paid to Authorized Claimants pursuant to the Settlement.** The Recognized Claim formulas are the basis upon which the Net Settlement Fund will be proportionately allocated to the Authorized Claimants.

5. This Plan of Allocation schedule reflects the declines in the stock price of Brocade Communications Systems, Inc. during the Class Period, that Lead Plaintiffs allege are reasonably attributable to the misstatements alleged in the Amended Consolidated Class Action Complaint and adjusted to reflect the strength of those allegations and the settlement negotiations.

6. The total number of damaged shares (shares purchased on or between May 18, 2000 and May 15, 2005 and held beyond one or more of the following dates: January 6, 2005; January 24, 2005; April 27, 2005; May 15, 2005) is estimated to amount to 282 million shares. The Settlement of \$160,098,500, thus, represents an expected rate of recovery of \$0.567 per damaged share. Net of expected costs, fees and other expenses of \$0.144 per damaged share, the expected net recovery is estimated to be \$0.423 per damaged share.

7. Calculation of Recognized Claims shall be as follows:

For shares purchased on or between May 18, 2000, and May 15, 2005, inclusive, the Recognized Claim shall be calculated as follows:

- a. For shares sold on or before January 6, 2005, no Recognized Claim shall be allowed;
- b. For shares sold between January 7, 2005 and May 15, 2005, inclusive, the Recognized Claim shall be the lesser of (i) the difference between the price paid and the price received (out-of-pocket investment loss); or (ii) the artificial inflation at the date of purchase, as set forth in Table 1 below, less the artificial inflation at the date of sale, as set forth in Table 1 below;
- c. For shares held at the open of trading on May 16, 2005 but sold on or before August 12, 2005, the Recognized Claim shall be the lesser of (i) the artificial inflation at the date of purchase, as set forth in the Table 1 below; or (ii) the difference between the price per share paid and the average closing price from May 16, 2005, and the date of sale, as provided for in Table 2;

¹ Capitalized terms not otherwise defined in this Plan of Allocation shall have the same meaning ascribed to them in the Notice.

- d. For shares still held at the close of trading on August 12, 2005, the Recognized Claim shall be the lesser of (i) the artificial inflation at the date of purchase, as set forth in the Table 1 below; or (ii) the difference between the price per share paid and \$4.06.

Table 1: Dollar Inflation for Specific Dates of Purchase and Sale

| Begin Date | End Date | Dollar Inflation |
|------------|------------|------------------|
| 05/18/2000 | 01/06/2005 | \$1.04 |
| 01/07/2005 | 01/24/2005 | \$0.52 |
| 01/25/2005 | 04/27/2005 | \$0.26 |
| 04/28/2005 | 05/15/2005 | \$0.07 |
| 05/16/2005 | 08/12/2005 | \$0.00 |

Table 2: Average Price Per Share for PSLRA loss limitations

| Sale Date | Closing Price | Avg. Closing Price | Sale Date | Closing Price | Avg. Closing Price |
|------------|---------------|--------------------|------------|---------------|--------------------|
| 05/16/2005 | 4.13 | 4.13 | 06/30/2005 | 3.88 | 4.02 |
| 05/17/2005 | 4.01 | 4.07 | 07/01/2005 | 3.91 | 4.02 |
| 05/18/2005 | 4.21 | 4.12 | 07/05/2005 | 3.90 | 4.01 |
| 05/19/2005 | 4.43 | 4.20 | 07/06/2005 | 3.90 | 4.01 |
| 05/20/2005 | 3.93 | 4.14 | 07/07/2005 | 3.90 | 4.01 |
| 05/23/2005 | 3.93 | 4.11 | 07/08/2005 | 4.00 | 4.01 |
| 05/24/2005 | 3.98 | 4.09 | 07/11/2005 | 4.00 | 4.01 |
| 05/25/2005 | 3.96 | 4.07 | 07/12/2005 | 4.02 | 4.01 |
| 05/26/2005 | 3.98 | 4.06 | 07/13/2005 | 3.99 | 4.01 |
| 05/27/2005 | 3.97 | 4.05 | 07/14/2005 | 3.99 | 4.01 |
| 05/31/2005 | 3.92 | 4.04 | 07/15/2005 | 3.98 | 4.01 |
| 06/01/2005 | 3.98 | 4.04 | 07/18/2005 | 3.90 | 4.00 |
| 06/02/2005 | 4.28 | 4.05 | 07/19/2005 | 3.96 | 4.00 |
| 06/03/2005 | 4.14 | 4.06 | 07/20/2005 | 3.97 | 4.00 |
| 06/06/2005 | 4.17 | 4.07 | 07/21/2005 | 4.13 | 4.00 |
| 06/07/2005 | 4.13 | 4.07 | 07/22/2005 | 4.24 | 4.01 |
| 06/08/2005 | 3.95 | 4.06 | 07/25/2005 | 4.38 | 4.02 |
| 06/09/2005 | 4.03 | 4.06 | 07/26/2005 | 4.49 | 4.03 |
| 06/10/2005 | 4.03 | 4.06 | 07/27/2005 | 4.36 | 4.03 |
| 06/13/2005 | 4.08 | 4.06 | 07/28/2005 | 4.44 | 4.04 |
| 06/14/2005 | 3.98 | 4.06 | 07/29/2005 | 4.48 | 4.05 |
| 06/15/2005 | 3.98 | 4.05 | 08/01/2005 | 4.42 | 4.06 |
| 06/16/2005 | 4.00 | 4.05 | 08/02/2005 | 4.49 | 4.06 |
| 06/17/2005 | 4.01 | 4.05 | 08/03/2005 | 3.96 | 4.06 |
| 06/20/2005 | 4.02 | 4.05 | 08/04/2005 | 3.96 | 4.06 |
| 06/21/2005 | 3.96 | 4.05 | 08/05/2005 | 4.06 | 4.06 |
| 06/22/2005 | 3.92 | 4.04 | 08/08/2005 | 4.07 | 4.06 |
| 06/23/2005 | 4.00 | 4.04 | 08/09/2005 | 4.02 | 4.06 |
| 06/24/2005 | 3.91 | 4.04 | 08/10/2005 | 4.02 | 4.06 |
| 06/27/2005 | 3.91 | 4.03 | 08/11/2005 | 4.07 | 4.06 |
| 06/28/2005 | 3.94 | 4.03 | 08/12/2005 | 4.13 | 4.06 |
| 06/29/2005 | 3.92 | 4.02 | | | |

8. Other Instructions and Guidelines Applicable to All Recognized Claims

- a. For Class Members who held Brocade common stock before the Class Period or made multiple purchases or sales during the Class Period, the first-in, first-out ("FIFO") method will be applied to such holdings, purchases and sales for purposes of calculating a Recognized Claim. Under the FIFO method, for each Brocade share, each sale of that Brocade share during the Class Period will be matched, in chronological order, first against that Brocade share held at the beginning of the Class Period. Such holdings and

sales will be included in the calculation of Recognized Claim as described above. For each Brocade share, the remaining sales of such Brocade shares during the Class Period will then be matched, in chronological order, against purchases of such Brocade shares during the Class Period.

- b. A purchase or sale of Brocade common stock shall be deemed to have occurred on the "contract" or "trade" date as opposed to the "settlement" or "payment" date. The receipt or grant by gift, devise or operation of law of Brocade common stock during the Class Period shall not be deemed a purchase, acquisition, disposition or sale of Brocade common stock for the calculation of an Authorized Claimant's Recognized Claim nor shall it be deemed an assignment of any claim relating to the purchase of such security unless specifically provided in the instrument of gift or assignment.
- c. Each Authorized Claimant shall be allocated a *pro rata* share of the Net Settlement Fund based on his, her or its Recognized Claim compared to the Total Recognized Claims of all Authorized Claimants. Each Authorized Claimant shall be paid an amount determined by multiplying the Net Settlement Fund by a fraction the numerator of which shall be his, her or its "Recognized Claim" and the denominator of which shall be the Total Recognized Claims of all Authorized Claimants.
- d. Class Members who do not file acceptable Proofs of Claim will not share in the Net Settlement Fund. Class Members who do not submit acceptable Proofs of Claim will nevertheless be bound by the Brocade Settlement and Final Judgment of the Court dismissing this Action.
- e. Bank drafts will be distributed to Authorized Claimants after the Effective Date of the Settlement and after all claims have been processed. To the extent that any monies remain in the Net Settlement Fund after the Administrator has caused distributions to be made to all Authorized Claimants, whether by reason of un-cashed distributions or otherwise, then, after the Administrator has made reasonable and diligent efforts to have Authorized Claimants cash their distributions, any balance remaining in the Cash Settlement Accounts one (1) year after the initial distribution of such funds shall be re-distributed to Authorized Claimants who have cashed their initial distributions and who would receive at least \$10.00 from such re-distribution, after payment of any unpaid costs or fees incurred in administering the Net Settlement Fund for such re-distribution. If six months after such re-distribution, funds remain in the Net Settlement Fund, then such funds shall be further re-distributed to Authorized Claimants who have cashed their most recent re-distribution and who would receive at least \$10.00 from such further re-distribution, after payment of any unpaid costs or fees incurred in administering the Net Settlement Fund for such re-distribution. The redistributions shall continue until it becomes economically unfeasible to continue re-distributions based upon the costs associated with such re-distributions, after which such balance shall be contributed to non-sectarian, not-for-profit 501(c)(3) organization(s) to be designated by Class Counsel.
- f. The Court has reserved jurisdiction to allow, disallow, or adjust the claim of any Class Member on equitable grounds.

EXHIBIT A

Tab 2

Proof of Claim

In re Brocade Communications Systems Securities Litigation

c/o Epiq Systems, Inc.
Claims Administrator
P.O. Box 3266
Portland, OR 97208-3266
Toll-Free 1-877-507-4370

**Must Be Postmarked
No Later Than
_____, 200_**

«Merge Sequence #»

«NAME_1»
«NAME_2»
«ADDRESS_1»
«ADDRESS_2»
«CITY» «ST» «ZIPCD»
«COUNTRY»

PROOF OF CLAIM AND RELEASE

YOU MUST COMPLETE AND MAIL THIS CLAIM FORM BY _____, 200_ TO BE ELIGIBLE TO SHARE IN THE \$160,098,500.00 SETTLEMENT IN THE IN RE BROCADE COMMUNICATIONS SYSTEMS SECURITIES LITIGATION.

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IMPORTANT: Before Completing This Proof of Claim and Release, Please Carefully Read the Enclosed Yellow Instruction Sheet.

SECTION A – CLAIMANT INFORMATION

Claimant Name(s) (as you would like the name(s) to appear on the check, if eligible for payment):

Last 4 digits of Claimant(s)'s Social Security Number/Taxpayer ID Number:

Name of the Person you would like the Claims Administrator to Contact Regarding This Claim (if different from the Claimant Name(s) listed above):

Claimant or Representative Contact Information:

The Claims Administrator will use this information for all communications relevant to this Claim (including the check, if eligible for payment). If this information changes, you **MUST** notify the Claims Administrator in writing at the address above or you may forfeit your right to receive any payment for which you may otherwise be eligible.

Street Address:

City:

State and Zip Code:

Country (Other than U.S.)

Daytime Telephone Number:

Evening Telephone Number:

Email Address:

(Email address is not required, but if you provide it you authorize the Claims Administrator to use it in providing you with information relevant to this claim.)

IF YOU FAIL TO MAIL A COMPLETE PROOF OF CLAIM FORM BY _____, 200_, YOUR CLAIM IS SUBJECT TO REJECTION OR YOUR PAYMENT MAY BE DELAYED

QUESTIONS? CALL TOLL-FREE 1-877-507-4370 OR VISIT www.brocadeclasssettlement.com

**SECTION B – BROCADE COMMON STOCK
PURCHASES**

YOU MUST SUBMIT DOCUMENTATION SUPPORTING THE INFORMATION BELOW

1. **BEGINNING HOLDINGS:** At the close of business on **May 17, 2000**, I owned _____ shares of BROCADE common stock.

2. **PURCHASES:** Below please list (in chronological order) all purchases and acquisitions of BROCADE common stock made between May 18, 2000 and May15, 2005, inclusive.

| Date(s) of Purchase (Month/Day/Year) | Number of Shares of Common Stock Purchased/Acquired | Purchase Price Per Share of Common Stock | Aggregate Cost (including commissions, taxes, and fees) | If Not USD (\$), Please Indicate Currency Used for Transaction |
|---|---|--|---|---|
| / / | | \$. | \$. | |
| / / | | \$. | \$. | |
| / / | | \$. | \$. | |
| / / | | \$. | \$. | |
| / / | | \$. | \$. | |
| / / | | \$. | \$. | |
| / / | | \$. | \$. | |
| / / | | \$. | \$. | |
| / / | | \$. | \$. | |

**IF YOU NEED ADDITIONAL SPACE TO LIST YOUR TRANSACTIONS YOU MUST
PHOTOCOPY THIS PAGE AND CHECK THIS BOX
IF YOU DO NOT CHECK THIS BOX ADDITIONAL PAGES WILL NOT BE REVIEWED**

**SECTION B – BROCADE COMMON STOCK (CONT'D)
SALES**

YOU MUST SUBMIT DOCUMENTATION SUPPORTING THE INFORMATION BELOW

3. **SALES:** Below please list (in chronological order) all sales of BROCADE common stock made between May 18, 2000 and August 12, 2005, inclusive.

| Date(s) of Sales (Month/Day/Year) | Number of Shares of Common Stock Sold | Sale Price Per Share of Common Stock | Amount Received (net of commissions, taxes, and fees) | If Not USD (\$), Please Indicate Currency Used for Transaction |
|--------------------------------------|---|--|---|---|
| / / | | \$. | \$. | |
| / / | | \$. | \$. | |
| / / | | \$. | \$. | |
| / / | | \$. | \$. | |
| / / | | \$. | \$. | |
| / / | | \$. | \$. | |
| / / | | \$. | \$. | |
| / / | | \$. | \$. | |
| / / | | \$. | \$. | |

4. **ENDING HOLDINGS:** At the close of business on **August 12, 2005**, I owned _____ shares of BROCADE common stock.

**IF YOU NEED ADDITIONAL SPACE TO LIST YOUR TRANSACTIONS YOU MUST
PHOTOCOPY THIS PAGE AND CHECK THIS BOX
IF YOU DO NOT CHECK THIS BOX ADDITIONAL PAGES WILL NOT BE REVIEWED**

SECTION C –RELEASE AND SIGNATURE

I. SUBMISSION TO JURISDICTION OF COURT AND ACKNOWLEDGEMENTS

I (We) submit this Proof of Claim under the terms of the Stipulation and Agreement of Settlement dated as of October 23, 2008 (“Brocade Stipulation”) and the Stipulation and Agreement of Settlement dated as of October 23, 2008 (“KPMG Stipulation”) described in the Notice of Class Action, Proposed Settlement, Motion for Attorneys’ Fees and Fairness Hearing (the “Notice”). I also submit to the jurisdiction of the United States District Court for the Northern District of California with respect to my claim as a Class Member (as defined in the Notice) and for purposes of enforcing the release set forth herein. I further acknowledge that I am bound by and subject to the terms of any judgment that may be entered in the *In re Brocade Communications Systems Securities Litigation*. I agree to furnish additional information to support this claim if required to do so. I have not submitted any other claim covering the same purchases or acquisitions of Brocade common stock during the Class Period and know of no other person having done so on my behalf. I understand that capitalized terms not otherwise defined in this Proof of Claim and Release shall have the same meaning given to such terms in the Notice.

II. RELEASE

I (We) hereby acknowledge full and complete satisfaction of, and do hereby fully, finally and forever settle, release, relinquish and discharge, all of the Settled Claims against each and all of the Released Parties, defined below:

“Released Parties” means Brocade Communications Systems, Inc. (“Brocade”) and its subsidiaries, affiliates, or successors (collectively “Brocade”); Gregory Reyes, Antonio Canova, Larry Sonsini, Seth Neiman and Neal Dempsey (collectively “Individual Defendants”); KPMG LLP; and each of Brocade’s, the Individual Defendants’ and KPMG LLP’s past or present directors, officers, employees, partners, principals, members, insurers, co-insurers, re-insurers, controlling shareholders, attorneys, advisors, accountants, auditors, personal or legal representatives, predecessors, successors, parents, subsidiaries, divisions, joint ventures, assigns, spouses, heirs, related or affiliated entities, any entity in which Brocade, an Individual Defendant or KPMG LLP has a controlling interest, any member of any Individual Defendant’s immediate family, or any trust of which any Individual Defendant is the settlor or which is for the benefit of any member of an Individual Defendant’s immediate family

“Settled Claims” means and includes any and all claims, debts, demands, controversies, obligations, losses, rights or causes of action or liabilities of any kind or nature whatsoever (including, but not limited to, any claims for damages (whether compensatory, special, incidental, consequential, punitive, exemplary or otherwise), injunctive relief, declaratory relief, rescission or rescissionary damages, interest, attorneys’ fees, expert or consulting fees, costs, expenses, or any other form of legal or equitable relief whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or un-accrued, liquidated or unliquidated, at law or in equity, matured or unmatured, whether class or individual in nature, including both known claims and Unknown Claims that: (i) have been asserted in the Action by Class Representatives on behalf of the Class and its Class Members against any of the Released Parties, or (ii) have been or could have been asserted in any forum by Class Representatives, Class Members or any of them against any of the Released Parties, which arise out of, relate to or are based upon the allegations, transactions, facts, matters, occurrences, representations or omissions involved, set forth, or referred to in the Complaint and/or the Amended Complaint. Settled Claims shall also include any claims, debts, demands, controversies, obligations, losses, rights or causes of action that Class Representatives, Class Members or any of them may have against the Released Parties or any of them which involve or relate in any way to the defense of the Action or the Settlement of the Action. Notwithstanding the foregoing, or any other provision contained in the Brocade Stipulation and/or the KPMG Stipulation, Settled Claims shall not include:

(i) any claims to enforce the Settlement, including, without limitation, any of the terms of the Brocade Stipulation and/or the KPMG Stipulation or orders or judgments issued by the Court in connection with the Settlement;

(ii) any claims asserted by Persons who exclude themselves from the Class by timely requesting exclusion in accordance with the requirements set forth in the Notice;

(iii) any claims, rights or causes of action that have been or could have been asserted by Brocade or on its behalf in (i) the action styled *Brocade Communications Systems, Inc. v. Reyes et al.*, Case No. 3:05-CV-02233-CRB, pending in the United States District Court, Northern District of California; (ii) the action styled *In re Brocade Communications Systems, Inc. Derivative Litigation*, Case No. 1-05-CV-041683, pending in the Superior Court of California, County of Santa Clara; (iii) the action styled *Barbour et al. v. Reyes et al.*, Case No. 3:08-cv-02029-CRB, pending in the United States District Court, Northern District of California; (iv) the action styled *Jha v. Reyes et al.*, Case No. 3:05-cv-02652-CRB, pending in the United States District Court, Northern District of California; (v) the action styled *Pratt v. Reyes et al.*, Case No. 3:05-cv-02372-CRB, pending in the United States District Court, Northern District of California; and (vi) the action styled *Galluscio v. Reyes et al.*, Case No. 3:05-cv-02235, pending in the United States District Court, Northern District of California; or

(iv) any and all claims that have been asserted under the Securities Act of 1933 and the Securities Exchange Act of 1934, or any other laws, for the allegedly wrongful conduct complained of in *In re Brocade Communications Systems, Inc. Initial Public*

Offering Securities Litigation, 01 CV 6613 (SAS)(BSJ), as coordinated for pretrial purposes in *In re Initial Public Offering Securities Litigation*, Master File No. 21 MC 92 (SAS), pending in the United States District Court for the Southern District of New York.

“Unknown Claims” means any and all claims that any Class Representative or Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties which, if known by him, her or it, might have affected his, her or its settlement with and release of the Released Parties or might have affected his, her or its decision to object or not to object to the Settlement. The Class Representatives and Class Members and each of them may hereafter discover facts in addition to or different from those which he, she or it now knows or believes to be true with respect to the subject matter of the Settled Claims. Nevertheless, with respect to any and all Settled Claims, the Class Representatives have stipulated and agreed that, upon the Effective Date, the Class Representatives shall expressly waive and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have, waived all provisions, rights and benefits of California Civil Code § 1542 and all provisions rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to California Civil Code § 1542. California Civil Code § 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Parties have expressly acknowledged, and the Class Members shall be deemed to have, and by operation of the Judgment shall have acknowledged, that the waiver and release of Unknown Claims constituting Settled Claims was separately bargained for and a material element of the Settlement.

I (We) declare under penalty of perjury under the laws of the United States of America that the foregoing information supplied by the undersigned is true and correct.

Executed this _____ day of _____, in _____, _____.
(Month/Year) (City) (State/Country)

Signature of Claimant

(Print your name here)

Signature of Joint Claimant, if any

(Print your name here)

Signature of person signing of behalf of Claimant

(Print your name here)

Capacity of person signing on behalf of Claimant
(if other than an individual, e.g., Executor,
President, Custodian, etc.)

REMINDER CHECKLIST
PLEASE READ

**ACCURATE CLAIM PROCESSING TAKES TIME.
THANK YOU FOR YOUR PATIENCE.**

1. Please be sure to sign this Proof of Claim and Release on page 6. If this Proof of Claim and Release is submitted on behalf of Joint Claimants, then both Claimants must sign.
2. Please remember to attach supporting documents. Do NOT provide originals of stock certificates or any other original documentation. Keep copies of everything you submit.
3. Keep a copy of your Proof of Claim form and all documentation submitted for your records.
4. Do NOT use highlighter on the Proof of Claim and Release or any supporting documents.
5. If you move after submitting this Proof of Claim and Release, please notify the Claims Administrator of the change in your address.
6. The Claims Administrator will acknowledge receipt of your Proof of Claim and Release by mail within 30 days of receipt. Your claim is not deemed filed until you receive an acknowledgment postcard. If you do not receive an acknowledgment postcard within 30 days, please call the Claims Administrator toll free at: 1-877-507-4370.

THIS PROOF OF CLAIM AND RELEASE MUST BE POSTMARKED NO LATER THAN
_____, 200_ AND MUST BE MAILED TO:

In re Brocade Communications Systems Securities Litigation
c/o Epiq Systems, Inc.
Claims Administrator
P.O. Box 3266
Portland, OR 97208-3266

INSTRUCTIONS FOR PROOF OF CLAIM AND RELEASE
In re Brocade Communications Systems Securities Litigation

IMPORTANT: PLEASE READ THE ACCOMPANYING NOTICE AND THESE INSTRUCTIONS CAREFULLY.

GENERAL INSTRUCTIONS

- A. The accompanying Notice of Class Action, Proposed Settlement, Motion for Attorneys' Fees and Fairness Hearing ("Notice") contains important information about your rights, defines certain settlement terms and eligibility criteria, and describes the proposed settlement and the manner in which the settlement fund will be distributed if the settlement is granted final approval by the Court. It is important that you read the Notice.
- B. If you are NOT a member of the Class (as defined in the Notice), or did not suffer harm according to the Plan of Allocation, **DO NOT** submit a Proof of Claim and Release ("Proof of Claim") form.
- C. Before completing the enclosed Proof of Claim, it is important to read these instructions carefully. Failure to follow the instructions may prevent you from receiving a payment from the settlement fund, or cause a delay in your receipt of a payment.
- D. To participate in the settlement, you **MUST**: (1) complete the Proof of Claim and sign page 7; (2) attach copies of all required documentation; and (3) mail your Proof of Claim so that it is postmarked by _____, 200_ to: In re Brocade Communications Systems Securities Litigation, c/o Epiq Systems, Inc., Claims Administrator, P.O. Box 3266, Portland, OR 97208-3266.
- E. When completing your transactional information (Section B), the transaction date is the "trade" or "contract" date, not the "settlement" or "payment" date. If you need additional space to list your transactions you must photocopy the correct transaction page and check the box at the bottom of the page. **NOTE: If you do not check the box at the bottom of the page, the additional pages may not be reviewed or considered.**
- F. **NOTE REGARDING SUPPORTING DOCUMENTATION.** All eligible transactions must be appropriately documented. Acceptable documentation generally includes periodic brokerage statements or trade confirmation slips. Documentation must include the claimant's name and address and identify the security, trade date, price paid per Brocade common stock share and total amount of the transaction. Do NOT provide originals or copies of stock certificates as they are not acceptable documentation of the trade date or price. Please send legible photocopies of your periodic brokerage statements or trade confirmation slips. You should keep a copy of the Proof of Claim and all supporting documentation you submit.
- G. **NOTE TO INSTITUTIONAL FILERS.** Claims with 100 or more transactions, or on behalf of 20 or more different accounts must be submitted electronically and in the required format. To obtain the mandatory electronic filing requirements and file layout, you may visit the website at www.brocadeclasssettlement.com or you may call the Claims Administrator at 1-877-507-4370. Any Proof of Claim not completed in accordance with the required electronic filing format will be rejected. Proof of authority to submit a Proof of Claim on behalf of any managed accounts must be submitted with any Proofs of Claim for such accounts.

Step-by-Step Instructions for Completing the Proof of Claim

SECTION A – CLAIMANT INFORMATION – PAGE 2.

*****Everyone must complete this section. Failure to complete this section will result in the rejection of your claim.*****

Step 1. State the name, address and last 4 digits of the Claimant(s)'s social security number/taxpayer ID number. Name should be provided as you would like it to appear on the check, provided you are eligible to receive payment.

Step 2. Provide your daytime and evening telephone numbers, and an email address in the space provided.

Step 3. If the Claimant would like the Claims Administrator to contact an agent (e.g. an attorney, a guardian, trustee, custodian, etc.), please provide that information in the space provided.

SECTION B – BROCADE COMMON STOCK – PAGES 3-4.

NOTE: Complete this section ONLY if you had CLASS PERIOD purchases or acquisitions of Brocade Common Stock. Otherwise, you may not be a Class Member. (Please Note: Class Period transactions include purchases or acquisitions of Brocade common stock between May 18, 2000 and May 15, 2005, inclusive.)

Step 4. List the amount of shares of Brocade common stock that you owned at the close of business on May 17, 2000. If you did not own any Brocade common stock at the close of business on May 17, 2000, put a zero (0) in the box.

Step 5. If you made **PURCHASES AND/OR ACQUISITIONS of Brocade common stock, you must complete Section B.2.** List all purchases and acquisitions of Brocade common stock made between May 18, 2000 and May 15, 2005, inclusive.

Step 6. For each purchase/acquisition transaction listed in Section B.2, you **MUST** provide the date of the purchase/acquisition, the number of shares purchased/acquired, the purchase/acquisition price per share and the total cost of the transaction (including brokerage commissions, taxes and fees).

Step 7. If you **SOLD shares of Brocade common stock between May 18, 2000 and August 12, 2005, inclusive, you must complete Section B.3.** List all sales made between May 18, 2000 and August 12, 2005, inclusive.

Step 8. For each sale transaction listed in Section B.3, you **MUST** provide the date of the sale, the number of shares sold, the sale price per share and the total amount received (after commissions, taxes and fees).

Step 9. List the amount of shares of Brocade common stock that you owned at the close of business on August 12, 2005. If you did not own any Brocade common stock at the close of business on August 12, 2005, put a zero (0) in the box.

SECTION C – RELEASE AND SIGNATURE – PAGE 5-6.

*****Everyone must complete this section. Failure to complete this section will result in the rejection of your claim.*****

Step 10. Read the Submission to Jurisdiction of Court and Acknowledgements and the Release carefully.

Step 11. Sign the form in the required area on Page 6. If you are signing on behalf of a Claimant in a representative capacity, please remember to print your name and your title/capacity in the space provided (you must also provide proof of your authority to act for the Claimant). If the claim is being made by Joint Claimants, then each must sign.

COMPLETING YOUR CLAIM FORM

*****YOU ARE ALMOST DONE*****

If you have fully completed your claim form as discussed above, there are only two steps remaining:

Step 12. SUPPLY APPROPRIATE SUPPORTING DOCUMENTATION. Ensure that appropriate documentation is provided. Attaching such back-up documentation is not IN LIEU of completing your Proof of Claim form – if the Proof of Claim form is not completed as instructed above, your claim **WILL BE REJECTED**. Attach documentation for all transactions and holdings being claimed.

Step 13. SUBMIT YOUR PROOF OF CLAIM FORM ON TIME. Once all of the above is completed, mail your Proof of Claim and Release and all necessary back up documentation to the Claims Administrator so that it is **postmarked no later than** _____, 200_. Keep a copy of your Proof of Claim and Release and all back up documentation for your records.

EXHIBIT A

Tab 3

Publication Notice

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

| | |
|------------------------------|--|
| |) Consolidated Case: 3:05-CV-02042-CRB |
| IN RE BROCADE COMMUNICATIONS |) |
| SYSTEMS, INC. SECURITIES |) |
| LITIGATION |) |

SUMMARY NOTICE OF PROPOSED SETTLEMENT

If You Purchased Or Otherwise Acquired The Common Stock Of Brocade Communications Systems, Inc. (“Brocade”) Between May 18, 2000 And May 15, 2005, Inclusive (the “Class Period”), You May Be A Member Of The Class In This Action And Entitled To Share In A \$160,098,500 Settlement.

YOU ARE HEREBY NOTIFIED that a class has been certified and that a settlement of \$160,098,500 has been proposed in the above-captioned action. This settlement will be comprised of the following payments: (i) \$160,000,000 by defendant Brocade Communications Systems, Inc. (“Brocade”) and (ii) \$98,500 by defendant KPMG LLP (“KPMG,” and collectively with Brocade, the “Settling Defendants”).

A hearing will be held before the Honorable Charles R. Breyer in the United States District Court for the Northern District of California, San Francisco Division, U.S. Courthouse, 450 Golden Gate Avenue, 19th Floor, Courtroom 8, San Francisco, CA 94102 at ____:_____.m., on _____, 2009 to determine whether: (1) the proposed settlement should be approved by the Court as fair, reasonable, adequate and in the best interests of the Class; (2) Class Counsel’s application for an award of attorneys’ fees and reimbursement of expenses and Class Representatives’ application for reimbursement of costs and expenses should be approved; (3) the Court should dismiss with prejudice and release all claims against the Settling Defendants and

current and former Brocade officers and directors Gregory Reyes, Antonio Canova, Larry Sonsini, Seth Neiman, and Neal Dempsey relating to the conduct alleged in this case; and (4) the Court should rule on such other matters as the Court deems appropriate. If approved, the Settlement will resolve all claims in this litigation as further described in the full printed Notice of Class Action, Proposed Settlement, Motion for Attorneys' Fees and Fairness Hearing (the "Notice").

IF YOU ARE A MEMBER OF THE CLASS DESCRIBED ABOVE, YOU MAY BE ENTITLED TO SHARE IN THE SETTLEMENT FUND AND YOUR RIGHTS WILL BE AFFECTED WHETHER YOU ACT OR NOT. If you have not yet received the full printed Notice and/or Proof of Claim and Release form ("Proof of Claim") explaining, among other things, how to make a claim to participate in the settlement or to exclude yourself from the settlement, you may obtain copies of these documents by downloading them from the website www.brocadeclasssettlement.com or by contacting the Claims Administrator:

In Re Brocade Securities Litigation Settlement
c/o Epiq Systems, Inc.
Claims Administrator
P.O. Box 3266
Portland, OR 97208

Inquiries, other than requests for the forms of Notice and Proof of Claim, may be made to Class Counsel:

Jeffrey J. Angelovich, Esq.
Bradley E. Beckworth, Esq.
Nix, Patterson & Roach, LLP
205 Linda Drive
Daingerfield, Texas 78638

To participate in the settlement, you must submit a Proof of Claim to the Claims Administrator, postmarked no later than _____ __, 200_. The deadline for submitting objections to the settlement and requesting exclusion from the settlement is _____ __, 200_.

Further information may also be obtained by directing your inquiry in writing to the Claims Administrator, Epiq Systems, Inc., at the address listed above. You may also call 1-877-507-4370 or visit www.brocadeclasssettlement.com for more information.

By Order of The Court

EXHIBIT B

Final Order and Judgment

EXHIBIT B

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 2 Bradley E. Beckworth (admitted *Pro Hac Vice*)
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11 Co-Lead Counsel

Additional Counsel for Erie

12
 13
 14
 15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17 SAN FRANCISCO DIVISION

18
 19
 20
 21 **In re: BROCADE SECURITIES**
LITIGATION

Consolidated Case No.: 3:05-CV-02042-CRB

[PROPOSED] FINAL ORDER AND JUDGMENT

EXHIBIT B

1 WHEREAS, a consolidated class action is pending in this Court captioned: *In re:*
2 *Brocade Securities Litigation*, Consolidated Case No. 3:05-CV-02042-CRB (the “Action”);

3 WHEREAS, the Court previously certified the Class (as defined herein) in this Action by
4 Order dated October 12, 2007, over the opposition of defendants Brocade Communications
5 Systems, Inc. (“Brocade” or the “Company”) and Gregory Reyes, Antonio Canova, Larry
6 Sonsini, Seth Neiman, and Neal Dempsey (collectively, “Individual Defendants”);

7 WHEREAS, on _____, 2008, the Court preliminarily certified the same Class
8 for purposes of effectuating the settlement among Lead Plaintiff and Class Representative,
9 Arkansas Public Employees Retirement System (“APERS”), and Class Representative, Erie
10 County Public Employees Retirement System (“ERIE”) (together, “Class Representatives”), and
11 KPMG LLP (“KPMG” and, collectively with Brocade and the Individual Defendants,
12 “Defendants”);

13 WHEREAS, pursuant to Federal Rule of Civil Procedure 23(e), this matter came before
14 the Court for hearing pursuant to the Order for Notice and Hearing dated _____, 2008
15 (the “Notice Order”), on the application of the parties for approval of a proposed settlement of
16 the Action (the “Settlement”) set forth in the following stipulations: (i) a Stipulation and
17 Agreement of Settlement dated October 23, 2008 entered into among Class Representatives, on
18 behalf of themselves and the Class, Brocade and the Individual Defendants (the “Brocade
19 Stipulation”), and (ii) a Stipulation and Agreement of Settlement dated October 23, 2008 entered
20 into among Class Representatives, on behalf of themselves and the Class, and KPMG (the
21 “KPMG Stipulation,” and together with the Brocade Stipulation, the “Stipulations”);

22 WHEREAS, due and adequate notice has been given to the Class as required in the
23 Notice Order; and

24 WHEREAS, the Court has considered all papers filed and proceedings had herein and
25 otherwise is fully informed in the premises and good cause appearing therefor;

26 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:
27
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EXHIBIT B

1 1. This Order and Final Judgment (the “Judgment”) incorporates by reference the
2 definitions in the Stipulations and all terms used herein shall have the same meanings as set forth
3 in the Stipulations unless otherwise defined herein.

4 2. This Court has jurisdiction over the subject matter of the Action, and over all
5 parties to the Action (the “Parties”), including all members of the Class.

6 3. The Notice of Class Action, Proposed Settlement, Motion for Attorneys’ Fees and
7 Fairness Hearing (the “Notice”) has been given to the Class, pursuant to and in the manner
8 directed by the Notice Order, proof of the mailing of the Notice and publication of the
9 Publication Notice was filed with the Court by Plaintiffs’ Counsel, and full opportunity to be
10 heard has been offered to all Parties, the Class, and persons and entities in interest. The form and
11 manner of Notice and Publication Notice are hereby determined to have: (a) constituted the best
12 practicable notice, (b) constituted notice that was reasonably calculated, under the circumstances,
13 to apprise Class Members of the pendency of the Action, of the effect of the Stipulations,
14 including the effect of the releases provided for therein, of their right to object to the proposed
15 Settlement, of their right to exclude themselves from the Class, and of their right to appear at the
16 Fairness Hearing, (c) constituted reasonable, due, adequate and sufficient notice to all persons or
17 entities entitled to receive notice, and (d) met all applicable requirements of the Federal Rules of
18 Civil Procedure, the United States Constitution (including the Due Process Clause), 15 U.S.C. §
19 78u-4(a)(7), the Rules of the Court and all other applicable laws. It is further determined that all
20 members of the Class are bound by the Judgment herein.

21 4. In connection with the certification of the Class, the Court has already determined
22 that each element Federal Rule of Civil Procedure 23(a) and 23(b)(3) was satisfied as to Class
23 Representatives’ claims against Brocade and the Individual Defendants and incorporates that
24 prior order as if set forth fully herein. Additionally, for purposes of effectuating the Settlement,
25 each of the provisions of Fed. R. Civ. P. 23 has been satisfied and the Action has been properly
26 maintained according to the provisions of Rules 23(a) and 23(b)(3) as to Class Representatives’
27 claims against KPMG. Specifically, this Court finds that: (a) the Class is so numerous that
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EXHIBIT B

1 joinder of all members is impracticable; (b) there are questions of law and fact common to the
2 Class; (c) the claims of the Class Representatives are typical of the claims of the Class; (d) Class
3 Representatives and their counsel have fairly and adequately protected the interests of the Class;
4 (e) the questions of law and fact common to members of the Class predominate over any
5 questions affecting only individual members of the Class; and (f) a class action is superior to
6 other available methods for the fair and efficient adjudication of the controversy considering: (i)
7 the interests of the Class Members in individually controlling the prosecution of the separate
8 actions, (ii) the extent and nature of any litigation concerning the controversy already
9 commenced by members of the Class, (iii) the desirability or undesirability of continuing the
10 litigation of the claims asserted in this Action, and (iv) the difficulties likely to be encountered in
11 the management of this Action as a class action.

12 5. Accordingly, the Action is hereby certified as a class action pursuant to Fed. R.
13 Civ. P. 23(a) and 23(b)(3) for purposes of effectuating the Settlement with KPMG on behalf of
14 the same Class previously certified in this Action, which consists of: all persons and entities who
15 purchased or otherwise acquired Brocade common stock between May 18, 2000 and May 15,
16 2005, inclusive, and who were damaged thereby (the "Class"). Excluded from the Class are: (a)
17 Defendants; (b) all officers, directors, and partners of any Defendant and of any Defendant's
18 partnerships, subsidiaries, or affiliates at all relevant times; (c) members of the immediate family
19 of any of the foregoing excluded parties; (d) the legal representatives, heirs, successors, and
20 assigns of any of the foregoing excluded parties; and (e) any entity in which any of the foregoing
21 excluded parties has or had a controlling interest at all relevant times. Also excluded from the
22 Class are any putative members of the Class who excluded themselves by timely requesting
23 exclusion in accordance with the requirements set forth in the Notice, as listed on Exhibit 1
24 annexed hereto.

25 6. The Settlement, and all transactions preparatory or incident thereto, is found to be
26 fair, reasonable, adequate, and in the best interests of the Class, and is hereby approved. The
27 Parties are hereby authorized and directed to comply with and to consummate the Settlement in
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1 accordance with the Stipulations, and the Clerk of this Court is directed to enter and docket this
2 Judgment in the Action.

3 7. The Action and all claims included therein, as well as all of the Settled Claims
4 (defined in the Stipulations and in Paragraph 8(c) below) are dismissed with prejudice as to Class
5 Representatives and all other members of the Class, and as against each and all of the Released
6 Parties (defined in the Stipulations and in Paragraph 8(a) below). The Parties are to bear their
7 own costs, except as otherwise provided in the Stipulations.

8 8. As used in this Judgment, the terms “Released Parties,” “Related Parties,”
9 “Settled Claims,” “Settled Defendants’ Claims,” and “Unknown Claims” shall have the
10 meanings set forth below:

11 (a) “Released Parties” means Defendants and, as applicable, each of their
12 Related Parties as defined below.

13 (b) “Related Parties” means each of Defendants’ past or present directors,
14 officers, employees, partners, principals, members, insurers, co-insurers, re-insurers, controlling
15 shareholders, attorneys, advisors, accountants, auditors, personal or legal representatives,
16 predecessors, successors, parents, subsidiaries, divisions, joint ventures, assigns, spouses, heirs,
17 related or affiliated entities, any entity in which a Defendant has a controlling interest, any
18 member of any Individual Defendant’s immediate family, or any trust of which any Individual
19 Defendant is the settlor or which is for the benefit of any member of an Individual Defendant’s
20 immediate family.

21 (c) “Settled Claims” means and includes any and all claims, debts, demands,
22 controversies, obligations, losses, rights or causes of action or liabilities of any kind or nature
23 whatsoever (including, but not limited to, any claims for damages (whether compensatory,
24 special, incidental, consequential, punitive, exemplary or otherwise), injunctive relief,
25 declaratory relief, rescission or rescissionary damages, interest, attorneys’ fees, expert or
26 consulting fees, costs, expenses, or any other form of legal or equitable relief whatsoever),
27 whether based on federal, state, local, statutory or common law or any other law, rule or
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1 regulation, whether fixed or contingent, accrued or un-accrued, liquidated or unliquidated, at law
2 or in equity, matured or unmatured, whether class or individual in nature, including both known
3 claims and Unknown Claims (defined herein) that: (i) have been asserted in this Action by Class
4 Representatives on behalf of the Class and its Class Members against any of the Released Parties,
5 or (ii) have been or could have been asserted in any forum by Class Representatives, Class
6 Members or any of them against any of the Released Parties, which arise out of, relate to or are
7 based upon the allegations, transactions, facts, matters, occurrences, representations or omissions
8 involved, set forth, or referred to in the Complaint and/or the Amended Complaint. Settled
9 Claims shall also include any claims, debts, demands, controversies, obligations, losses, rights or
10 causes of action that Class Representatives, Class Members or any of them may have against the
11 Released Parties or any of them which involve or relate in any way to the defense of the Action
12 or the Settlement of the Action. Notwithstanding the foregoing, Settled Claims shall not include:
13 (i) any claims to enforce the Settlement, including, without limitation, any of the terms of the
14 Stipulations, the Notice Order, this Judgment or any other orders issued by the Court in
15 connection with the Settlement; (ii) any claims asserted by Persons who exclude themselves
16 from the Class by timely requesting exclusion in accordance with the requirements set forth in
17 the Notice; (iii) any claims, rights or causes of action that have been or could have been asserted
18 in the Derivative Actions and/or the Company Action (as defined in the Brocade Stipulation); or
19 (iv) any and all claims that have been asserted under the Securities Act of 1933 and the
20 Securities Exchange Act of 1934, or any other laws, for the allegedly wrongful conduct
21 complained of in *In re Brocade Communications Systems, Inc. Initial Public Offering Securities*
22 *Litigation*, 01 CV 6613 (SAS)(BSJ), as coordinated for pretrial purposes in *In re Initial Public*
23 *Offering Securities Litigation*, Master File No. 21 MC 92 (SAS), pending in the United States
24 District Court for the Southern District of New York.

25 (d) “Settled Defendants’ Claims” means and includes any and all claims,
26 debts, demands, controversies, obligations, losses, costs, rights or causes of action or liabilities of
27 any kind or nature whatsoever (including, but not limited to, any claims for damages (whether
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1 compensatory, special, incidental, consequential, punitive, exemplary or otherwise), injunctive
2 relief, declaratory relief, rescission or rescissionary damages, interest, attorneys' fees, expert or
3 consulting fees, costs, expenses, or any other form of legal or equitable relief whatsoever),
4 whether based on federal, state, local, statutory or common law or any other law, rule or
5 regulation, whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law
6 or in equity, matured or unmatured, including both known claims and Unknown Claims, that
7 have been or could have been asserted in the Action or any forum by the Released Parties against
8 any of the Class Representatives, Plaintiffs' Counsel, Class Members or their attorneys, which
9 arise out of or relate in any way to the institution, prosecution, or settlement of the Action.
10 Notwithstanding the foregoing, Settled Defendants' Claims shall not include any claims to
11 enforce the Settlement, including, without limitation, any of the terms of the Stipulations, the
12 Notice Order, this Judgment or any other orders issued by the Court in connection with the
13 Settlement .

14 (e) "Unknown Claims" means any and all claims that any Class
15 Representative or Class Member does not know or suspect to exist and any and all claims that
16 any Defendant does not know or suspect to exist in his, her or its favor at the time of the release
17 of the Released Parties which, if known by him, her or it, might have affected his, her or its
18 settlement with and release of, as applicable, the Released Parties, Class Representatives, and
19 Class Members, or might have affected his, her or its decision to object or not to object to this
20 Settlement. The Class Representatives, Class Members, Defendants and each of them have
21 acknowledged and agreed that he, she or it may hereafter discover facts in addition to or different
22 from those which he, she or it now knows or believes to be true with respect to the subject matter
23 of the Settled Claims and/or the Settled Defendants' Claims. Nevertheless, with respect to any
24 and all Settled Claims and Settled Defendants' Claims, the Parties to the Stipulations have
25 stipulated and agreed that, upon the Effective Date, they shall expressly waive and each of the
26 Class Members shall be deemed to have, and by operation of the Judgment shall have, waived all
27 provisions, rights and benefits of California Civil Code § 1542 and all provisions rights and
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1 benefits conferred by any law of any state or territory of the United States, or principle of
2 common law, which is similar, comparable or equivalent to California Civil Code § 1542.
3 California Civil Code § 1542 provides:

4 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
5 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR**
6 **HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH**
7 **IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED**
8 **HIS OR HER SETTLEMENT WITH THE DEBTOR.**

9 The Parties to the Stipulations have expressly acknowledged and agreed, and the Class Members
10 shall be deemed to have, and by operation of the Judgment shall have acknowledged and agreed,
11 that the waiver and release of Unknown Claims constituting Settled Claims and/or Settled
12 Defendants' Claims was separately bargained for and a material element of the Settlement.

13 9. (a) In accordance with 15 U.S.C. § 78u-4(f)(7)(A), any and all claims for
14 contribution arising out of any Settled Claim (i) by any person against Brocade or the
15 Individual Defendants, and (ii) by Brocade or the Individual Defendants against any person,
16 other than claims for contribution that Brocade and/or the Special Litigation Committee (as
17 defined in the Brocade Stipulation) have asserted or may assert against the Individual
18 Defendants, the Related Parties or any of them, are hereby permanently barred and discharged.
19 In accordance with 15 U.S.C. § 78u-4(f)(7)(A), any and all claims for contribution arising out
20 of any Settled Claim (i) by any person against KPMG, and (ii) by KPMG against any person,
21 other than a person whose liability has been extinguished by the KPMG Settlement, are hereby
22 permanently barred and discharged. This paragraph 9(a) shall be referred to herein as the "Bar
23 Order."

24 (b) Notwithstanding the Bar Order or any other provision or paragraph in this
25 Judgment or 15 U.S.C. § 78u-4(f)(7)(A) to the contrary, the Individual Defendants have
26 acknowledged and agreed, and the Court finds, that the Individual Defendants are "person[s]
27 whose liability has been extinguished" by the Brocade Stipulation within the meaning of 15
28 U.S.C. § 78u-4(f)(7)(A)(ii). Further, the Court finds that the Individual Defendants have
29 knowingly and expressly waived the right to assert the Bar Order or 15 U.S.C. § 78u-4(f)(7)(A)

EXHIBIT B

1 as a defense to any claims for contribution that Brocade and/or the Special Litigation
2 Committee have asserted or may assert against them in connection with the defense and
3 Settlement of the Action or any related litigation arising from the transactions and occurrences
4 that form the basis of the Action; provided, however, that the Individual Defendants and their
5 Related Parties, and each of them, shall retain the right to defend against any such claims for
6 contribution on other grounds, including, without limitation: (i) that he or she is not at fault for
7 the conduct giving rise to the Settlement; (ii) that his or her proportional fault is less than
8 asserted by Brocade and/or the Special Litigation Committee; (iii) that Brocade is legally
9 and/or contractually obligated to indemnify him or her for some or all of the Settlement
10 Amount and/or that he or she is not required to reimburse or repay Brocade for that
11 indemnified amount; and (iv) that the Settlement Amount is greater than warranted under all of
12 the circumstances. Further, Brocade and the Special Litigation Committee have agreed that
13 they will not argue or otherwise assert in any forum or proceeding that (i) by entering into the
14 Brocade Stipulation the Individual Defendants acquiesced in the Settlement Amount or waived
15 in any way their arguments challenging the Settlement Amount as excessive, and (ii) the Bar
16 Order in any way affects or impairs the existing rights of the Individual Defendants to obtain
17 indemnification and advancement of fees incurred in connection with Settled Claims or any
18 other claim asserted against them. The Individual Defendants have agreed that they will not
19 argue or otherwise assert in any forum or proceeding that, by entering into the Brocade
20 Stipulation, Brocade or the Special Litigation Committee in any way compromised or
21 otherwise affected its/their right to seek to limit or extinguish any purported obligation to
22 indemnify or advance fees to the Individual Defendants and their Related Parties or to seek to
23 recover any of the fees or expenses that Brocade has advanced or may advance on behalf of or
24 for the benefit of the Individual Defendants and/or their Related Parties.

25 10. Upon the Effective Date, Class Representatives and all Class Members on
26 behalf of themselves, their personal representatives, heirs, executors, administrators, trustees,
27 successors and assigns: (a) shall have fully, finally and forever released, relinquished and
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1 discharged each and every one of the Settled Claims against the Released Parties, whether or
2 not any such Class Member or Class Representative executes or delivers a Proof of Claim and
3 Release form (“Proof of Claim”); and (b) shall be deemed to have covenanted not to sue on,
4 and shall forever be barred from suing on, instituting, prosecuting, continuing, maintaining or
5 asserting in any forum, either directly or indirectly, on their own behalf or on behalf of any
6 class or other person, any Settled Claim against any of the Released Parties.

7 11. Upon the Effective Date, each of the Defendants, on behalf of themselves and
8 their Related Parties: (a) shall have fully, finally and forever released, relinquished and
9 discharged each and every one of the Settled Defendants’ Claims; and (b) shall be deemed to
10 have covenanted not to sue on, and shall forever be barred from suing on, instituting,
11 prosecuting, continuing, maintaining or asserting in any forum, either directly or indirectly, on
12 their own behalf or on behalf of any class or other person, any Settled Defendants’ Claim
13 against Class Representatives, Class Members and their respective counsel, or any of them.

14 12. Notwithstanding ¶¶ 9-11 herein, nothing in this Judgment shall bar any action or
15 claim by any of the Parties or the Released Parties to enforce or effectuate the terms of the
16 Stipulations or this Judgment.

17 13. This Judgment and the Stipulations, including any provisions contained in the
18 Stipulations, any negotiations, statements, or proceedings in connection therewith, or any
19 action undertaken pursuant thereto:

20 (a) shall not be offered or received against any Released Party as evidence of
21 or construed as or deemed to be evidence of any presumption, concession, or admission by the
22 Released Parties with respect to the truth of any fact alleged by any of the plaintiffs or the
23 validity of any claim that has been or could have been asserted in the Action or in any litigation,
24 or the deficiency of any defense that has been or could have been asserted in the Action or in any
25 litigation, or of any liability, negligence, fault, or wrongdoing of any Released Party;

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1 (b) shall not be offered or received against any Released Party as evidence of
2 a presumption, concession or admission of any fault, misrepresentation or omission with respect
3 to any statement or written document approved or made by any Released Party;

4 (c) shall not be offered or received against any Released Party as evidence of
5 a presumption, concession or admission with respect to any liability, negligence, fault or
6 wrongdoing in any civil, criminal or administrative action or proceeding, other than such
7 proceedings as may be necessary to effectuate the provisions of the Stipulations; provided,
8 however, that the Released Parties may offer or refer to the Stipulations to effectuate the terms of
9 the Stipulations, including the releases and other liability protection granted them hereunder, and
10 may file the Stipulations and/or this Judgment in any action that may be brought against them
11 (other than one that has been or may be brought by Brocade and/or the Special Litigation
12 Committee) in order to support a defense or counterclaim based on principles of res judicata,
13 collateral estoppel, full faith and credit, release, good faith settlement, judgment bar or reduction
14 or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim;

15 (d) shall not be construed against any Released Party as an admission or
16 concession that the consideration to be given hereunder represents the amount that could be or
17 would have been recovered after trial; and

18 (e) shall not be construed as or received in evidence as an admission,
19 concession or presumption against the Class Representatives or any of the Class Members that
20 any of their claims are without merit, or that any defenses asserted by Defendants have any merit,
21 or that damages recoverable under the Action would not have exceeded the Settlement Amount.

22 14. The Plan of Allocation is approved as fair and reasonable, and Plaintiffs'
23 Counsel and the Claims Administrator are directed to administer the Settlement in accordance
24 with the terms and provisions of the Stipulations.

25 15. The Court finds that all Parties and their counsel have complied with each
26 requirement of the PSLRA and Rules 11 and 37 of the Federal Rules of Civil Procedure as to all
27 proceedings herein and that Class Representatives and Plaintiffs' Counsel at all times acted in the
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1 best interests of the Class and had a good faith basis to bring, maintain and prosecute this Action
2 as to each Defendant in accordance with the PSLRA and Federal Rule of Civil Procedure 11.

3 16. Only those Class Members who submit valid and timely Proofs of Claim shall be
4 entitled to receive a distribution from the Net Settlement Fund. The Proof of Claim to be
5 executed by the Class Members shall further release all Settled Claims against the Released
6 Parties. All Class Members shall be bound by all of the terms of the Stipulations and this
7 Judgment, including the releases set forth herein, whether or not they submit a valid and timely
8 Proof of Claim, and shall be barred from bringing any action against any of the Released Parties
9 concerning the Settled Claims.

10 17. No Class Member shall have any claim against Plaintiffs' Counsel, the Claims
11 Administrator, or other agent designated by Plaintiffs' Counsel based on the distributions made
12 substantially in accordance with the Settlement and Plan of Allocation as approved by the Court
13 and further orders of the Court.

14 18. No Class Member shall have any claim against the Defendants, Defendants'
15 counsel, or any of the Released Parties with respect to: (a) any act, omission or determination of
16 Plaintiffs' Counsel, the Escrow Agent or the Claims Administrator, or any of their respective
17 designees or agents, in connection with the administration of the Settlement or otherwise; (b) the
18 management, investment or distribution of the Gross Settlement Fund and/or the Net Settlement
19 Fund; (c) the Plan of Allocation; (d) the determination, administration, calculation or payment of
20 claims asserted against the Gross Settlement Fund and/or the Net Settlement Fund; (e) the
21 administration of the Escrow Account; (f) any losses suffered by, or fluctuations in the value of,
22 the Gross Settlement Fund and/or the Net Settlement Fund; or (g) the payment or withholding of
23 any Taxes, expenses and/or costs incurred in connection with the taxation of the Gross
24 Settlement Fund and/or the Net Settlement Fund or the filing of any tax returns.

25 19. Any order approving or modifying the Plan of Allocation set forth in the Notice,
26 or the application by Plaintiffs' Counsel for an award of attorneys' fees and reimbursement of
27 expenses or any request of Class Representatives for reimbursement of reasonable costs and
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1 expenses shall not disturb or affect the Finality of this Judgment, the Stipulations or the
2 Settlement contained therein.

3 20. Plaintiffs' Counsel are hereby awarded a total of \$_____ in
4 reimbursement of expenses, plus accrued interest. After deducting such expenses from the Gross
5 Settlement Fund, Plaintiffs' Counsel also are hereby awarded attorneys' fees in the amount of
6 _____% of the Gross Settlement Fund, plus accrued interest, which sum the Court finds to be
7 fair and reasonable. The foregoing awards of fees and expenses shall be paid to Plaintiffs'
8 Counsel from the Gross Settlement Fund, and such payment shall be made at the time and in the
9 manner provided in the Stipulations, with interest from the date the Gross Settlement Fund was
10 funded to the date of payment at the same net rate that interest is earned by the Gross Settlement
11 Fund. The appointment and distribution among Plaintiffs' Counsel of any award of attorneys'
12 fees shall be within Plaintiffs' Counsel's sole discretion.

13 21. In making this award of attorneys' fees and reimbursement of expenses to be paid
14 from the Gross Settlement Fund, the Court has considered and found that:

15 (a) the Settlement has created a fund of \$160,098,500 million in cash that is
16 already on deposit, plus interest thereon, and that numerous Class Members who submit
17 acceptable Proofs of Claim will benefit from the Settlement;

18 (b) Over _____ copies of the Notice were disseminated to putative Class
19 Members stating that Plaintiffs' Counsel were moving for attorneys' fees not to exceed 25% of
20 the Gross Settlement Fund and reimbursement of expenses from the Gross Settlement Fund in a
21 total amount not to exceed \$____, and [___] objections were filed against the terms of the proposed
22 Settlement or the ceiling on the fees and expenses contained in the Notice;

23 (c) Plaintiffs' Counsel have conducted the litigation and achieved the
24 Settlement in good faith and with skill, perseverance and diligent advocacy;

25 (d) The Action involves complex factual and legal issues and was actively
26 prosecuted for over three years and, in the absence of a settlement, would involve further lengthy
27 proceedings with uncertain resolution of the complex factual and legal issues;

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1 (e) Had Plaintiffs' Counsel not achieved the Settlement there would remain a
2 significant risk that the Class Representatives and the Class may have recovered less or nothing
3 from the Defendants;

4 (f) Plaintiffs' Counsel have advanced \$_____ in costs and expenses to fund
5 the litigation of this Action; and

6 (g) The amount of attorneys' fees awarded and expenses reimbursed from the
7 Gross Settlement Fund are fair and reasonable under all of the circumstances and consistent with
8 awards in similar cases.

9 22. Class Representatives, APERS and ERIE, are hereby awarded \$_____ and
10 \$_____, respectively, as reimbursement for their reasonable costs and expenses directly
11 related to their representation of the Class as allowed by 15 U.S.C. §78u-4(a)(4), plus interest
12 earned on such amount at the same rate earned by the Gross Settlement Fund.

13 23. Without affecting the Finality of this Judgment in any way, the Court reserves
14 exclusive and continuing jurisdiction over the Action, the Class Representatives, the Class, and
15 the Released Parties for purposes of: (a) supervising the implementation, enforcement,
16 construction, and interpretation of the Stipulations, the Plan of Allocation, and this Judgment; (b)
17 hearing and determining any application by Plaintiffs' Counsel for an award of attorneys' fees,
18 costs, and expenses and/or reimbursement to the Class Representatives, if such determinations
19 were not made at the Fairness Hearing; and (c) supervising the distribution of the Gross
20 Settlement Fund and/or the Net Settlement Fund.

21 24. In the event that the Settlement is terminated or does not become Final in
22 accordance with the terms of the Stipulations for any reason whatsoever, or in the event that the
23 Gross Settlement Fund, or any portion thereof, is returned to Brocade or KPMG, then this
24 Judgment shall be rendered null and void and shall be vacated to the extent provided by and in
25 accordance with the Stipulations and, in such event, all orders entered and releases delivered in
26 connection herewith shall be null and void to the extent provided by and in accordance with the
27 Stipulations.

