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11 **UNITED STATES DISTRICT COURT**
 12 **CENTRAL DISTRICT OF CALIFORNIA**
 13 **SOUTHERN DIVISION**

14 SECURITIES AND EXCHANGE
 15 COMMISSION,

16 Plaintiff,

17 vs.

18 HENRY T. NICHOLAS III, HENRY
 19 SAMUELI, WILLIAM J. RUEHLE,
 and DAVID DULL,

20 Defendants.

Case No. SACV08-539 CJC (RNBx)
COMPLAINT

21
 22
 23 1. This matter involves improper stock option backdating at Broadcom
 24 Corporation ("Broadcom" or the "Company"), which resulted in the Company's
 25 issuance of false financial statements that concealed from shareholders billions of
 26 dollars in stock-based compensation expenses. Broadcom is a technology
 27 company that relied heavily on stock options to recruit and retain employees.
 28

1 From June 1998 through May 2003, Broadcom systematically backdated employee
2 and officer stock options to coincide with the dates of low closing prices for the
3 Company's common stock without properly recording the compensation expenses
4 associated with such options. In January 2007, Broadcom restated its financial
5 results for the years 1998 through 2005 and reported an additional \$2.22 billion in
6 net non-cash compensation expenses.

7 2. The backdating scheme was orchestrated and carried out by
8 Broadcom's most senior executives, including defendants Henry T. Nicholas III
9 ("Nicholas"), Broadcom's co-founder and former co-chairman and chief executive
10 officer, Henry Samueli ("Samueli"), Broadcom's co-founder and current chairman
11 and chief technical officer, William J. Ruehle ("Ruehle"), Broadcom's former
12 chief financial officer, and David Dull, Broadcom's general counsel (collectively
13 "Defendants").

14 3. Nicholas was the final decision-maker and the driving force behind
15 Broadcom's options backdating, while Ruehle selected most of the grant dates
16 after-the-fact by comparing historical prices. Nicholas and Samueli served on the
17 two-member option committee that had authority to approve options to all
18 employees and officers who were not Section 16 officers. Nicholas and Samueli
19 each signed dozens of false option committee unanimous written consents to
20 memorialize numerous backdated grants. Although Broadcom's compensation
21 committee, which consisted of two independent directors, had the legal authority to
22 approve option grants to Section 16 officers, Nicholas, Samueli, and Ruehle in
23 effect decided those grants and used hindsight to select the dates for option grants
24 to Section 16 officers. Dull knew about and participated in the fraud. He
25 instructed his subordinate to prepare, and reviewed and approved false board and
26 compensation committee documents to conceal two backdated grants in 2001.

27 4. Nicholas, Samueli, Ruehle, and Dull violated the antifraud provisions
28 of the federal securities laws, falsified books and records, and caused Broadcom to

1 report false financial results. The Commission seeks an order (1) enjoining the
2 Defendants from future violations of the securities laws; (2) requiring Ruehle and
3 Dull to disgorge their ill-gotten gains and pay prejudgment interest; (3) requiring
4 all Defendants to pay civil monetary penalties; (4) requiring Nicholas and Ruehle
5 to disgorge bonuses and stock sale profits pursuant to Section 304 of the Sarbanes-
6 Oxley Act; (5) barring all Defendants from serving as officers or directors of a
7 public company; and (6) providing other appropriate relief.

8 JURISDICTION AND VENUE

9 5. This Court has jurisdiction over this action pursuant to Sections 20(b),
10 20(d)(1), and 22(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C.
11 §§ 77t(b), 77t(d)(1), and 77v(a), and Sections 21(d), 21(e), and 27 of the Securities
12 Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78u(d), 78u(e), and 78aa.
13 Defendants have directly or indirectly made use of the means or instrumentalities
14 of interstate commerce, of the mails, or of the facilities of a national securities
15 exchange in connection with the transactions, acts, practices, and courses of
16 business alleged in this Complaint.

17 6. Venue is proper in this district pursuant to Section 22(a) of the
18 Securities Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C.
19 § 78aa, because Defendants resided within this district during the relevant time
20 period and certain of the transactions, acts, practices, and courses of conduct
21 constituting violations of the laws alleged in this Complaint occurred within this
22 district.

23 DEFENDANTS

24 7. Henry T. Nicholas III, 48, is a resident of Newport Coast, California.
25 Nicholas co-founded Broadcom and served as its CEO and president from
26 Broadcom’s inception in 1991 until Nicholas’s resignation from those positions in
27 January 2003. From 1991 to May 2003, Nicholas also served as a member of
28 Broadcom’s board of directors, as co-chairman of the board, and as one of two

1 members of the option committee. As of April 2008, Nicholas (together with his
2 affiliates) owned 32,189,097 shares (6.26%) of Broadcom's common stock.

3 8. Henry Samueli, 53, is a resident of Corona del Mar, California. He
4 co-founded Broadcom with Nicholas, and he has served as a member of
5 Broadcom's board of directors and as Broadcom's chief technical officer since
6 1991. Samueli also served as co-chairman of the board until May 2003, and as
7 chairman since May 2003. From 1998 to May 2003, Samueli served with Nicholas
8 on the two-member option committee, and from May 2003 to the present he has
9 served on the successor equity award committee. As of April 2008, Samueli
10 (together with his affiliates) owned 34,700,056 shares (6.75%) of Broadcom's
11 common stock.

12 9. William J. Ruehle, 65, is a resident of Atherton, California. He joined
13 Broadcom in June 1997 as vice president and chief financial officer, and became
14 senior vice president and chief financial officer in April 2005. On September 19,
15 2006, Ruehle accelerated his retirement as a result of Broadcom's internal
16 investigation of stock option grant practices.

17 10. David Dull, 59, is a resident of Newport Coast, California. He joined
18 Broadcom as vice president of business affairs and general counsel in March 1998,
19 and was elected corporate secretary in April 1998. He became senior vice
20 president of business affairs, general counsel and secretary in April 2005.

21 **RELATED PARTY**

22 11. Broadcom Corporation is a California corporation headquartered in
23 Irvine, California. Founded in 1991 by Nicholas and Samueli, Broadcom designs,
24 develops, and supplies semiconductors for wired and wireless communications
25 markets. At all relevant times, Broadcom's common stock was registered under
26 Section 12(g) of the Exchange Act and was traded on the Nasdaq National Market
27 under the symbol "BRCM." Broadcom conducted an initial public offering on
28 April 17, 1998.

1 FACTS

2 A. Stock Options at Broadcom

3 12. After Broadcom went public in April 1998, it experienced tremendous
4 growth, expanding from approximately 300 employees in 1998 to about 3000
5 employees in 2002. Broadcom operated in the highly competitive high-tech
6 market, where recruiting and retaining talented employees was a top priority.
7 Another priority, as set forth by Broadcom's two founders, Nicholas and Samuelli,
8 was to preserve cash. To preserve cash, Broadcom maintained a ceiling of
9 \$110,000 annual cash salary for most employees and officers during the relevant
10 period. As a result, Broadcom relied heavily on stock options to recruit and retain
11 employees.

12 13. Each stock option gave the grantee the right to buy one share of
13 Broadcom's stock from the Company at a set price, called the "exercise" price or
14 "strike" price, on a future date, after the option had vested. The option was "in-
15 the-money" whenever the trading price of Broadcom's common stock exceeded
16 the option's exercise price. The option was "at-the-money" whenever the trading
17 price of Broadcom's common stock and the exercise price were the same. The
18 option was "underwater" or "out-of-money" whenever the trading price of
19 Broadcom's common stock was less than the exercise price.

20 14. From June 1998 through May 2003, Broadcom granted both annual
21 and periodic options to its employees and officers under its stock option plans.
22 Before 2000, Broadcom awarded annual grants to employees on or about the
23 anniversary date of their employment. Beginning in 2000, annual options were
24 awarded to most eligible employees, and were referred to as "focal" grants.
25 Periodic options were also awarded to selected employees. These option grants
26 included new hire grants, performance and promotion grants, patent grants, and
27 "top-up" grants that were made in connection with acquisitions.

28 15. During the relevant period, Broadcom's stated practice was to grant

1 all stock options with an exercise price that purportedly matched the fair market
2 value of the Company's stock on the grant date.

3 **B. Accounting For Employee Stock Options**

4 16. Throughout the relevant period, Broadcom accounted for stock
5 options pursuant to Accounting Principles Board Opinion No. 25, *Accounting for*
6 *Stock Issued to Employees* ("APB 25"). Under APB 25 and the accounting rules in
7 effect from 1998 through June 2005, a public company was allowed to grant stock
8 options to employees without recording a compensation expense so long as the
9 options were granted at-the-money. However, if a company granted in-the-money
10 options, the company was required to record as an expense on its financial
11 statements the difference between the exercise price and the quoted market price
12 on the "measurement date" over the vesting period of the options. The
13 measurement date, as defined by APB 25, is the first date on which the following
14 information is known: (i) the number of options that an individual employee is
15 entitled to receive, and (ii) the exercise price. The stock options that Broadcom
16 granted to its employees typically had a vesting period of four years, during which
17 time a proportion of the option shares became exercisable periodically.
18 Consequently, granting in-the-money options to employees could have had a
19 significant impact on the expense and income (or loss) reported to Broadcom's
20 shareholders.

21 **C. The Backdating Scheme At Broadcom**

22 17. During the relevant period, Broadcom granted stock options to its
23 employees and officers, including executives who fell within the definition of
24 "officer" under Rule 16a-1(f) of the Exchange Act, 17 C.F.R. § 240.16a-1(f)
25 ("Section 16 officers"). Option grants to employees and non-Section 16 officers
26 were supposed to be approved by a two-member option committee comprised of
27 Nicholas and Samuelli. Grants to Section 16 officers were supposed to be approved
28 by a compensation committee comprised of two independent board members.

1 Notwithstanding the distinction between the two committees, Nicholas and
2 Samueli in effect determined option grants for all employees, including Section 16
3 officers.

4 18. Option committee and compensation committee approval of option
5 grants was documented by unanimous written consents (“UWCs”) that approved
6 grants “effective as of” a specified date. The UWCs, however, were usually
7 prepared weeks or months after the “as of” date. The UWCs typically referred to
8 an attached schedule that listed the names of the grantees and the number of shares
9 subject to each option. The schedules were usually prepared long after the “as of”
10 date, and they were sometimes changed even after that.

11 19. For the periodic grants and focal grants that Broadcom made in 1998
12 and 1999, the human resources and shareholder services departments maintained
13 schedules of employees who were eligible to receive options. Beginning in 2000,
14 for annual, company-wide focal grants, Broadcom’s senior management first
15 established a pool of options, which was then subdivided and distributed to all of
16 the business units for allocation to their respective employees. Supervisors for the
17 business units then submitted their grant recommendations to the then-director of
18 human resources, who assembled the master grant list for final approval by
19 Nicholas and Samueli.

20 20. From June 1998 through May 2003, the option committee purportedly
21 approved as many as 88 option grants. But for many of these grants, there were no
22 option committee “meetings” or decisions made on the purported grant dates.
23 Instead, Ruehle, who was Broadcom’s CFO at the time, retroactively determined
24 the grant dates after reviewing a list of Broadcom’s closing stock prices over a
25 ranging time period. During the relevant period, Ruehle received “menu” emails
26 from the Company’s stock administrator, in which the stock administrator provided
27 a list of historical closing prices for several previous Fridays (the day the option
28 committee purportedly held meetings) and inquired whether the option committee

1 had met and approved option grants on any of the listed dates. The “menu” emails
2 allowed Ruehle to easily “look back” and pick the lowest strike price for the
3 period. Ruehle invariably responded to the stock administrator’s requests by
4 confirming that the option committee had met to approve options on the date with
5 the lowest corresponding stock price.

6 21. For example, a December 17, 1999 email from the stock administrator
7 to Ruehle reads as follows:

8 REMINDER: The last option grant date you have advised us is 10/29/99.

9 Friday FMVs are:

10 11/5 \$149.25

11 11/12 \$180.313

12 11/19 \$196.50

13 11/26 \$207.125

14 12/3 \$207.75

15 12/10 \$217.75

16 12/17 \$225.313

17 End of month November 11/30 was \$179.063. ...

18 Please let us know if and when the Option Committee met to approve grants.

19 Later that day, Ruehle confirmed the option committee’s approval of grants on
20 November 5 and November 30, 1999, the dates with the two lowest stock prices on
21 the “menu” email.

22 22. Ruehle continued to receive emails containing suggested historical
23 stock prices through 2002. For example, on November 22, 2002, Ruehle received
24 an email from Broadcom’s treasurer, stating: “Attached are the pending new hire
25 grants. There are 660,000 that we could price at \$10.63 [the closing price on
26 October 18] that would take us through 10/18, we can wait and see on the rest.”

27 Six minutes later, Ruehle responded by saying “I do believe the Option Committee
28 did meet on 10/18....” On November 22, 2002, the price had risen to \$20.64, and
the \$10.63 closing price on October 18th was the lowest closing price for
Broadcom’s stock in the interim.

29 23. Ruehle selected the grant dates on behalf of Nicholas and Samuelli,
30 who, as the sole members of the option committee, signed the UWCs that falsely
31 memorialized that options were granted “as of” the selected grant dates, even

1 though Nicholas and Samueli knew there was no option committee meeting or
2 decision to grant options on the stated dates and that the terms of the grants had not
3 been finalized on those dates.

4 24. In addition to selecting grant dates after the fact, Broadcom, through
5 its senior officers, including Nicholas, Samueli, Ruehle, and Dull, systematically
6 allocated options to individual employees after selecting grant dates, many of
7 which had been backdated. Broadcom's human resources staff routinely added or
8 deleted option awards after the grant date at the request of others under the guise of
9 "administrative errors."

10 25. In June 1999, in an effort to recruit one engineer, Nicholas offered the
11 engineer backdated, in-the-money options to acquire 120,000 shares of Broadcom
12 stock at an exercise price of \$88.375, which was the closing price on May 25,
13 1999. The engineer, however, did not begin working at Broadcom until June 28,
14 1999. On that date, Broadcom's stock closed at \$118. Nicholas backdated the
15 offer letter to reflect the desired grant date. Nicholas also caused the human
16 resources department to falsify the engineer's personnel files to reflect the
17 backdated date.

18 26. During 2000, Broadcom senior officers deployed a deceptive method
19 to recruit "key" employees with lucrative options – hiring through acquisition
20 targets. Broadcom made numerous acquisitions in 2000. The acquisition targets
21 were typically start-up companies whose stock was comparatively cheap. Hiring
22 through such targets allowed Broadcom to promise prospective employees options
23 to purchase the target's stock that, once the acquisition was completed, would be
24 enormously in-the-money. Broadcom directed the acquisition target to hire
25 Broadcom's candidates on Broadcom's terms after the signing of a definitive
26 agreement. Because the new hires never really worked for the target company,
27 employment and personnel records were falsified to effect the hiring and granting
28 of options by the target. Nicholas, Ruehle, Samueli, and Dull all knew about this

1 deceptive practice. Samueli advocated this approach for several potential key
2 employees.

3 27. One example of the deceptive practice involved the hiring of
4 Broadcom's chief information officer in August 2000. On August 9, 2000,
5 Broadcom signed an agreement to acquire a start-up company called Newport
6 Communications, Inc. ("Newport"). At the same time that Broadcom was
7 negotiating the acquisition, Broadcom had been trying to recruit a candidate for the
8 position of chief information officer at Broadcom. To make Broadcom's
9 compensation package attractive to the recruit, Ruehle offered the candidate
10 options in Newport stock which, upon completion of the acquisition, would be
11 in-the-money by \$12 million. The candidate accepted the offer, and received an
12 August 25, 2000 offer letter from Newport that included options to acquire
13 600,000 shares of Newport stock. The recruit, however, never worked for
14 Newport, and reported directly to Broadcom. By bringing in the candidate through
15 Newport, Broadcom concealed the grant of a large amount of in-the-money options
16 to the new hire. Although Broadcom recorded an expense for the options that the
17 new hire had received from Newport, the expense was recorded as acquisition-
18 related deferred compensation, and not as a compensation expense associated with
19 in-the-money options.

20 **D. The May 26, 2000 Focal Grant**

21 28. Broadcom made its first company-wide, or "focal," grant purportedly
22 on May 26, 2000, at an exercise price of \$118.38 per share, the lowest closing
23 price for Broadcom stock between October 1999 and October 2000. The May 26,
24 2000 grant date was selected on or about May 30, 2000. In May of 2000, however,
25 Broadcom was not prepared to make the company-wide focal grant. In mid-June
26 of 2000, the Company hired its first director of compensation, who developed the
27 guidelines and spreadsheets for options allocations at the end of June 2000. In
28 early July, pools of options were distributed to all business units for individual

1 allocations, but the allocations were not completed until early to mid-September.
2 Between September of 2000 and January of 2002, the human resources department
3 recorded numerous changes to the allocations, under the guise of “administrative
4 errors.”

5 29. The allocation delay caught the attention of Broadcom’s auditors in
6 late July 2000, when Broadcom’s stock price had risen from \$118 per share to well
7 over \$200. The price difference exposed Broadcom to a potential \$700 million
8 compensation expense for the focal grant. On July 20, 2000, Broadcom’s manager
9 of financial reporting, who was the primary contact with the auditors, informed
10 Ruehle of the auditors’ concern. She said:

11 As expected, I am experiencing resistance from [the auditors] on our Focal
12 Grant program. The basic concern is the measurement date of these grants
13 (5/26/00). ...
14 [The auditors’] position is that we need to know how many shares are
granted to each individual to actually set the measurement date. ... [auditors]
could require us to record compensation expenses... [which] could be over
\$700 million based on the 5/26/00 price and the current price!

15 On the same date, Ruehle emailed Nicholas, stating: “We need to give to [auditors]
16 a list of approved option grants for the 5/26 focal reviews. They are making noises
17 that we will have to take a compensation hit for the difference between the 5/26
18 price (\$118) and the current price because we have not yet ‘completed’ the grants.
19 This would result in a charge of over \$700M! Obviously we are not about to let
20 this happen.”

21 30. Subsequently, Ruehle had a meeting with the auditors, and
22 presumably discussed the issue with the relevant partners at the audit firm. In the
23 end, the auditors signed off on the May 26, 2000 grant without insisting that
24 Broadcom record a compensation charge. In a September 11, 2000 email to
25 Ruehle, Broadcom’s manager of financial reporting warned that: “Going forward,
26 we can expect much greater scrutiny by [the auditors] on our option granting
27 process. I strongly recommend for next year’s focal grant that we have all the
28 names and numbers ready before we select a price date. I do not believe that [the

1 auditors] will grant us any flexibility on this in the future.” On that same day,
2 Ruehle forwarded the email to other senior officers, including Nicholas, Samueli,
3 and Dull. Consequently, by September 2000, Nicholas, Samueli, Ruehle, and Dull
4 knew, or were reckless in not knowing, that allocating options to individual
5 employees after a grant date had been determined would trigger accounting
6 consequences.

7 31. In late July 2000, at Ruehle’s request, Broadcom’s stock administrator
8 prepared draft minutes for a purported option committee meeting on May 26, 2000,
9 at which the option committee purportedly set up an option pool of seven million
10 shares for the grant. The draft minutes were later sent to Dull, although the
11 minutes were never finalized or signed. Rather, the approval of the grant was
12 documented only by UWCs for the option committee and the compensation
13 committee, dated “as of” May 26, 2000. The compensation committee members
14 first heard of the grant when Dull sent them the draft UWC on September 23,
15 2000.

16 32. As a result of the May 26, 2000 grant, Ruehle received options to
17 purchase 100,000 shares, and Dull received options to purchase 150,000 shares, of
18 Broadcom stock.

19 **E. The 2001 Grants**

20 **1. Background**

21 33. In late 2000, Broadcom’s stock price began declining steadily and was
22 trading at about \$30 per share in March 2001. As a result, many employees’ stock
23 options became “underwater,” which means that the trading price of Broadcom’s
24 stock was lower than the exercise price. The underwater options had a negative
25 impact on employee morale because Broadcom paid below-the-market cash
26 salaries and relied heavily on stock options to make its compensation package
27 competitive. To address employee concerns, Broadcom commenced a tender offer
28 in May 2001.

1 34. The tender offer allowed employees to exchange their underwater
2 options for new options to be issued between December 24, 2001 and January 31,
3 2002. Employees had to decide whether to take part in the tender offer by June 23,
4 2001. Broadcom undertook to allocate proposed focal grants to employees before
5 the tender offer closing date of June 23, 2001, so that employees knew how many
6 options they would receive from the 2001 focal grant if they decided not to
7 participate in the tender offer. For those employees who declined to participate in
8 the tender offer, Broadcom granted focal and other options on Sunday, June 24,
9 2001, with the exercise price of \$33.68, which was the closing price of
10 Broadcom's stock on the previous Friday, June 22, 2001.

11 35. At the time of the June 24, 2001 grant, Nicholas had not completed
12 the allocations of options to his direct reports. In fact, Nicholas had delayed for
13 months in submitting his allocations. Consistent with prior practices, however, the
14 June 24 grant date was "preserved" for Nicholas by the director of human
15 resources. In September of 2001, Broadcom's stock price dropped below the June
16 24 exercise price of \$33.68, and the June 24 grant date was abandoned.

17 36. Broadcom made two additional focal grants to employees and officers
18 who declined to participate in the tender offer. Those two additional focal grants
19 had purported grant dates of October 1 and October 19, 2001. Broadcom then
20 granted replacement and focal options to those employees and officers who
21 participated in the tender offer with a purported grant date of December 24, 2001.

22 **2. October 1, 2001 Grant**

23 37. Around November 2, 2001, the stock administrator sent an email to
24 the director of human resources advising that Ruehle had confirmed an option
25 committee meeting approving options on October 1, 2001 at the strike price of
26 \$18.77, the lowest price for Broadcom stock in 2001. Later in November 2001,
27 Nicholas decided to seize the low \$18.77 price to grant special stock options to two
28 groups of employees: (i) top performers, and (ii) those employees whose existing

1 options would be fully vested in the next two years. From mid-November to early
2 December 2001, at Nicholas's urging, Samueli and the director of human resources
3 analyzed the status of employee options and worked with the business units to
4 identify the recipients of such grants.

5 38. On January 2, 2002, Nicholas finally sent the director of human
6 resources a spreadsheet of his option allocations in an email with a subject line that
7 read: "I found my old share grant spreadsheet from before October." The
8 spreadsheet, however, was first created on November 27, 2001. Nicholas
9 continued to review and change his allocations through at least January 21, 2002.
10 As late as March 22, 2002, Nicholas awarded several options at the \$18.77 price.

11 **3. October 19, 2001 Grant**

12 39. Nicholas's spreadsheet included option grants to several Section 16
13 officers who were also supposed to receive the October 1 grant at an exercise price
14 of \$18.77. At the time, Ruehle and the director of human resources expressed
15 concern that employees would resent officers receiving the lower strike price of
16 \$18.77, when the rank and file employees received the June 24 price of \$33.68.
17 They therefore proposed to grant options to Section 16 officers with the same
18 October 1, 2001 grant date but at the June 24, 2001 price of \$33.68. Nicholas
19 disagreed.

20 40. On January 3, 2002, the director of human resources emailed Samueli,
21 Ruehle, and Dull, stating that Nicholas "would like to find another opportunistic
22 date, say \$25.55 on 10/5 or \$29.25 on 10/19." This was the first mention of
23 October 19, 2001 as a possible grant date for the Section 16 officers. Nine minutes
24 later Samueli responded to the group, "OK, then go with the 10/19 price."

25 **4. December 24, 2001 Grant**

26 41. Meanwhile, the tender offer's six-month-and-a-day waiting period
27 ended. Broadcom had from December 24, 2001 to January 31, 2002 to re-grant
28 options to those employees who had participated in the tender offer. At the end of

1 December 2001, the senior officers, including Nicholas, Samueli, and Ruehle,
2 deliberated on when to grant the options. Dull knew the senior officers were
3 deliberating about a grant date. On December 30, 2001, the director of human
4 resources emailed Ruehle, informing him that Nicholas "made a big deal" on when
5 to re-grant options:

6 He asked me if we could wait until the end of January to see what happens,
7 but if the best price was Dec. 24, could we go back and grab it?? I really
8 couldn't answer since we are crossing years, so my understanding was that
he was trying to get a hold of you to find out before he would give me the
list. Did you speak with him??

9 Ruehle responded on January 1, 2002 that "[T]he deadline for grabbing the 12/24
10 pricing date is Jan 5."

11 42. On January 4, 2002, Ruehle sent an email to Nicholas and Samueli,
12 copying Dull, the director of human resources and others on the email:

13 I VERY strongly recommend that these options be priced as of Dec 24 (\$39
14 & change). The absolute drop dead for this decision is Friday Jan 4. If there
15 are no objections I would like to go ahead and price as of that date.... Given
the recent market performance, I think that we should grab the Dec 24
price.

16 Samueli responded five minutes later, saying: "I agree. We may not see the
17 \$39.75 price again before Jan. 31. It would be far too risky to wait and see."

18 43. Later that day, the director of human resources confirmed to Samueli
19 and Ruehle that the option and compensation committees had approved the re-
20 grant on December 24, 2001. Nicholas was copied on the confirmation. Dull later
21 received a copy of the confirmation email forwarded by an in-house attorney under
22 his supervision. Nicholas, Samueli, Ruehle, and Dull all knew that the date was
23 selected retroactively. Consistent with past practice, Nicholas and Samueli signed
24 a backdated option committee UWC approving the grant "as of" December 24,
25 2001.

26 44. The December 24, 2001 closing stock price of \$39.75 was the lowest
27 closing price for Broadcom stock during the entire re-grant window.

28

1 **5. False Documentation of Grants to Section 16 Officers**

2 45. Of the four grants in 2001, the purported June 24, October 19, and
3 December 24 grants included option grants to Section 16 officers and therefore
4 required the approval of the compensation committee. There was no meeting of
5 the compensation committee to approve the June 24, October 19, and December 24
6 grants on the purported grant dates. The compensation committee was not
7 constituted for the period that would have covered the October 19 and December
8 24 grants.

9 46. At the time of the June 24, 2001 grant, the compensation committee
10 was comprised of two members. One of those members died in July 2001, before
11 signing any UWC approving the June 24 grant. In early January 2002, upon Dull's
12 request and in an effort to supply the missing documentation, an in-house lawyer
13 under Dull's supervision prepared draft minutes for a "special telephonic meeting"
14 of the compensation committee on June 24, 2001. The in-house lawyer sent the
15 draft minutes to Dull and others for review. Dull never signed the draft minutes in
16 his capacity as corporate secretary. Hence, there was no compensation committee
17 approval of the June 24, 2001 grant to Section 16 officers. Nevertheless, the draft
18 minutes were provided to Broadcom's external auditors and were included in their
19 workpapers as draft meeting minutes of the compensation committee.

20 47. After the board member's death, Broadcom's board of directors
21 consisted of Nicholas, Samuelli, and two outside directors, one of whom was
22 already a member of the compensation committee. Beginning in September 2001,
23 Dull led the effort to resolve the vacancy issue. He first directed the in-house
24 attorney under his supervision to find out whether the compensation committee
25 needed two members and who could serve. The in-house lawyer advised Dull that
26 at least two independent members were required. That left the other outside
27 director as the sole choice to replace the deceased member of the compensation
28 committee.

1 48. The board met on October 19, 2001, during which Dull reported on
2 the board vacancy. The board did not make any decision about the vacancy at that
3 time.

4 49. On November 4, 2001, Dull emailed Nicholas and Samueli. In the
5 email, Dull advised them on the need to constitute the compensation committee,
6 explained why neither of them could serve, and asked for approval to add the other
7 outside director to the compensation committee. Samueli immediately responded
8 yes, but Nicholas never responded. On December 21 and again on December 28,
9 2001, Dull asked Ruehle to “get closure” so the Company could prepare for the re-
10 grant of options to Section 16 officers – including himself – after the tender offer.
11 Dull later followed up with Nicholas on January 3, 2002, urging him to act since it
12 “affected our ability to make option grants to Sec 16 officers.” Again, Dull
13 received no response.

14 50. In the meantime, Dull instructed the in-house attorney to prepare for
15 distribution the board UWC appointing the other outside director. The attorney
16 prepared the draft and sent it to Dull, asking what date should be reflected in the
17 UWC. Dull reviewed the draft and told the attorney to “[l]eave the date blank.”
18 Dull also asked the attorney to prepare compensation committee UWCs approving
19 grants to Section 16 officers. On January 3, 2002, Dull received from the attorney
20 a draft UWC approving a grant to Section 16 officers dated as of October 1, 2001,
21 but at the June 24th price of \$33.68. On January 7, 2002, Dull received from the
22 attorney another two compensation committee UWCs approving grants to Section
23 16 officers, this time dated October 19, 2001 and December 24, 2001. Dull
24 reviewed and approved these UWCs.

25 51. On February 27, 2002, at Dull’s request, the in-house attorney
26 emailed Ruehle to ask when the other outside director was appointed to the
27 compensation committee. Ruehle provided a date of October 12, 2001.

28 52. During a meeting of the board of directors on March 1, 2002, the

1 board members were presented with, and signed, a UWC appointing the other
2 outside director to the compensation committee “as of” October 12, 2001. At the
3 same meeting, the members of the compensation committee, including the newly
4 appointed member, were presented with and signed UWCs dated “as of” October
5 19 and December 24, 2001, which approved option grants on those dates.

6 53. Ruehle and Dull participated in the June 2001 tender offer and each
7 received options to purchase 300,000 shares of Broadcom stock from the
8 December 24, 2001 grant.

9 **F. 2002/2003 Focal Grants on July 3, 2002**

10 54. In March 2002, Broadcom’s stock price began a steady decline. The
11 2002 focal grant process had started in the spring of 2002. By mid-May, the
12 director of human resources sent several emails stating that the option committee
13 had met and approved focal grants on May 10, 2002 at an exercise price of \$24.54,
14 then the lowest price since October 2001. After the stock price dropped even
15 further, Ruehle instructed the director of human resources to retract the May 10,
16 2002 grant date.

17 55. In mid-June 2002, Samueli suggested that Broadcom take advantage
18 of “a favorable strike price” and grant 2003 focal options at the same time as the
19 2002 grant, hence making it a “double focal” grant. Ruehle “killed” the proposal
20 in early July because of the dilutive impact (of more than 31 million shares) that a
21 “double focal” grant would have on Broadcom’s stock. The director of human
22 resources appealed to Samueli, and Samueli “revived” the double focal grant in
23 mid-July.

24 56. Broadcom awarded the “double focal” option grant purportedly on
25 July 3, 2002 at an exercise price of \$15.74. Ruehle retroactively selected the July
26 3, 2002 date on or about July 16, 2002. The July 3, 2002 price of \$15.74 was the
27 second lowest closing price for Broadcom’s stock between January 1, 2002 and
28 September 5, 2002.

1 57. Allocation of the 2003 focal portion of the grant was rolled out to
2 business units on or after July 16, 2002. After that time, except for a few units and
3 Nicholas's direct reports, Broadcom's business unit heads, including Dull,
4 submitted their allocations of options for their subordinates, although the human
5 resources department continued to process changes through at least August 7,
6 2002. During this period, the director of human resources complained that she had
7 to meet in person with all the business units about the allocation because Ruehle
8 did not want her to "communicate anything in writing since it would leave an
9 email trail of unfavorable dates."

10 58. The July 3, 2002 grant did not include Nicholas's "direct reports,"
11 because Nicholas's option allocations did not arrive until July 26, 2002. By that
12 time, however, the July 3 grant date had been surrendered for these employees. On
13 August 5, 2002, Broadcom's stock closed at \$15.74, which was exactly the same
14 closing price as on July 3, 2002. The next day, Ruehle priced options for
15 Nicholas's direct reports, including several Section 16 officers, at the August 5,
16 2002 price of \$15.74. Previously, on July 30, 2002, when Broadcom's stock
17 closed at \$19.65, Ruehle had advised that the compensation committee had
18 approved a grant to Section 16 officers on July 26, 2002 at the price of \$17.38.
19 Ruehle abandoned the July 26 date when a more favorable price appeared on
20 August 5, 2002 at \$15.74.

21 59. The compensation committee did not approve the grant on August 5,
22 2002, and its members did not learn of that grant until late September 2002, when
23 they were asked to execute a UWC dated "as of" August 5, 2002.

24 60. Ruehle received options to purchase 300,000 shares, and Dull
25 received options to purchase 200,000 shares, of Broadcom stock from the August
26 5, 2002 grant.

27 **G. The May 19, 2003 Focal Grant**

28 61. Broadcom granted focal options to newly hired employees who did

1 not participate in the 2002/2003 “double focal” grant with a purported grant date of
2 May 19, 2003 at an exercise price of \$20.00. The director of human resources
3 communicated the May 19, 2003 grant date to the stock administrator, although the
4 director of human resources did not seek the approval of the grant until June 5,
5 2003, when the closing price of Broadcom’s stock was \$26.66. Dull did not
6 provide the director of human resources with the allocations of options for his
7 subordinates until after May 19, 2003. Dull also knew that there was no approval
8 of the grant on May 19, 2003.

9 **H. Defendants Caused Broadcom to File Materially False and Misleading**
10 **Financial Statements and Other Filings**

11 62. As a public company, Broadcom filed with the Commission periodic
12 reports and other filings, including annual reports that included audited financial
13 statements, which were certified by the Company’s outside auditors. Broadcom’s
14 public filings stated that Broadcom accounted for its stock option grants to
15 employees in accordance with generally accepted accounting principles, or GAAP.
16 GAAP requires that a company recognize a compensation expense when the
17 company issues in-the-money stock options.

18 63. From June 1998 through May 2003, by repeatedly backdating its
19 option grants, Broadcom granted in-the-money options, but Broadcom did not
20 record a compensation expense for such options. As a result, Broadcom made
21 false and misleading disclosures regarding its operating results and option grants in
22 its public filings, including its periodic reports on Forms 10-K, 10-Q, and 8-K, its
23 proxy statements, and its registration statements.

24 64. Nicholas, Samueli, Ruehle, and Dull reviewed and/or signed the
25 public filings. Nicholas, Samueli, Ruehle, and Dull knew, or were reckless in not
26 knowing, that Broadcom’s public filings made materially false and misleading
27 statements relating to Broadcom’s stock-based compensation charge and its
28 practices for granting employee stock options.

1 **1. Forms 10-K, 10-Q, and 8-K**

2 65. The backdating scheme caused each of Broadcom's annual reports on
3 Form 10-K for fiscal years 1998 through 2003, and each of its quarterly reports on
4 Form 10-Q for the same period, to materially understate Broadcom's stock-based
5 compensation expenses. This, in turn, caused Broadcom to overstate its net
6 income or to understate its net loss, and to overstate its earnings per share and
7 profit margin. Broadcom's Forms 10-K and 10-Q for fiscal years 2004 and 2005
8 contain materially false and misleading financial statements and results because, in
9 part, they contain, to varying degrees, materially false and misleading historical
10 financial statements from fiscal years 1998 through 2003. Broadcom's materially
11 misstated operating results also were featured in Broadcom's earnings releases to
12 the market, which were filed with the Commission in Forms 8-K during the
13 relevant period.

14 66. On January 23, 2007, Broadcom restated its financial results for the
15 years 1998 through 2005 to record an additional \$2.22 billion of net non-cash
16 compensation expense associated with backdated stock options. The impact of the
17 restatement on Broadcom's operating income during the relevant period was as
18 follows:

19

| Fiscal Year Ended 12/31 | Broadcom's Operating Income (Loss) As Originally Stated | Unrecognized Compensation Expense | Percentage By Which Operating Income (Loss) Was Overstated (Understated) |
|--------------------------------|---|-----------------------------------|--|
| 20 21 1998 | \$35,660,000 | \$11,770,000 | 49.3% |
| 22 1999 | \$92,653,000 | \$74,927,000 | 422.7% |
| 23 2000 | (\$713,381,000) | \$442,326,000 | (38.3%) |
| 24 2001 | (\$2,790,921,000) | \$916,879,000 | (24.7%) |
| 25 2002 | (\$1,918,415,000) | \$374,337,000 | (16.3%) |
| 2003 | (\$967,619,000) | \$334,006,000 | (25.7%) |
| 2004 | \$272,025,000 | \$65,085,000 | 31.5% |
| 2005 | \$336,837,000 | \$44,640,000 | 15.3% |
| Total | (\$5,653,161,000) | \$2,263,970,000 | (28.6%) |

26 67. Broadcom's failure to account for compensation expenses associated
27 with the granting of stock options led Broadcom to overstate its gross profit by
28 13% for 2001, 4% for 2002, and 4% for 2003. The Company's failure to account

1 for compensation expenses also caused Broadcom to understate its net loss per
2 share (basic and diluted) by 25% for 2001, 20% for 2002, and 26% for 2003, and
3 to overstate its net income per share by 28% (basic) or 27% (diluted) for 2004, and
4 13% (basic) or 11% (diluted) for 2005.

5 68. In addition, in its annual and quarterly reports on Forms 10-K and
6 10-Q for fiscal year 2000, Broadcom reported compensation expenses for the
7 options that Broadcom's acquisition targets granted to new-hires at Broadcom's
8 direction and on its behalf. The Forms 10-K and 10-Q, however, did not disclose
9 Broadcom's deceptive practice of hiring through the acquisition targets. The
10 Forms 10-K and 10-Q also falsely reported the compensation liability as
11 acquisition-related deferred compensation, not as compensation expense associated
12 with in-the-money options.

13 69. From 1998 through 2002, Nicholas reviewed and signed Broadcom's
14 Forms 10-K and 10-Q. From 1998 through 2005, Samueli reviewed and signed
15 Broadcom's Forms 10-K and 10-Q. From 1998 through 2005, Ruehle caused to be
16 prepared Broadcom's Forms 10-K and 10-Q, and he reviewed and signed them.
17 From 1998 through 2005, Dull caused to be prepared and reviewed Broadcom's
18 Forms 10-K and 10-Q. Nicholas, Samueli, Ruehle, and Dull knew, or were
19 reckless in not knowing, that the disclosures in the Forms 10-K and 10-Q that they
20 reviewed and/or signed made false representations and failed to report Broadcom's
21 stock option compensation expenses.

22 70. From 1998 through 2005, Ruehle and Dull caused to be prepared and
23 reviewed Broadcom's Forms 8-K containing Broadcom's earnings releases.
24 Ruehle also signed the Forms 8-K. Ruehle and Dull knew, or were reckless in not
25 knowing, that the disclosures in the Forms 8-K they reviewed and/or signed failed
26 to report Broadcom's stock option compensation expenses.

27 71. Nicholas signed a Sarbanes-Oxley Section 302 certification for the
28 Form 10-Q for the quarter ended September 30, 2002, in which he certified that the

1 financial statements contained therein “fairly present in all material respects the
2 financial condition [and] results of operations” of Broadcom. At the time he
3 signed the certification, Nicholas knew it was not true.

4 72. Ruehle signed Sarbanes-Oxley Section 302 certifications for the
5 Forms 10-K and Forms 10-Q from November 2002 through 2005, in which he
6 certified that the financial statements contained therein “fairly present in all
7 material respects the financial condition [and] results of operations” of Broadcom.
8 At the time he signed the certifications, Ruehle knew that they were not true.

9 **2. Proxy Statements**

10 73. Broadcom sent shareholders proxy statements in connection with its
11 annual shareholder meetings from 1999 through 2003, and for a special
12 shareholder meeting in October 1999. In the proxy statements for the shareholder
13 meetings for the years 2001 through 2003 and for the 1999 special shareholder
14 meeting, Broadcom solicited shareholder approval of annual amendments to its
15 1998 Incentive Stock Plan to increase the number of shares reserved for issuance
16 under the Plan.

17 74. Each of the proxy statements that Broadcom sent its shareholders
18 falsely represented that options to its executive officers were granted at the market
19 price on the date of the grant. The proxy statements for the shareholder meetings
20 for the years 2001 through 2003 and for the 1999 special shareholder meeting
21 falsely disclosed the date of option grants to Broadcom’s named executive officers,
22 which were incorporated by reference into the Company’s annual reports on Form
23 10-K. The proxy statements also represented that the compensation committee had
24 exclusive authority to grant options to Section 16 officers, when in fact Nicholas,
25 Samueli, and Ruehle decided when and how many options to award. In addition,
26 while the proxy statements described that granting in-the-money options would
27 result in the Company taking a compensation expense, the proxy statements were
28 materially misleading because they failed to disclose that Broadcom routinely

1 ignored this treatment of its stock options.

2 75. Dull signed the proxy statements on behalf of Broadcom's board.
3 Nicholas signed the letter to shareholders that was enclosed with the proxy
4 statements for 1999 and 2000. Ruehle was one of the two proxies appointed in
5 connection with the proxy solicitations between 1999 and 2005. Nicholas, Ruehle,
6 and Dull knew, or were reckless in not knowing, that they made materially false
7 and misleading statements and disclosures in the proxy statements that they
8 reviewed and/or signed.

9 **3. Registration Statements**

10 76. From June 1998 through 2005, Broadcom filed various registration
11 statements with the Commission, including one on Form S-1, four on Forms S-3,
12 one on Form S-4, and 21 on Forms S-8. These registration statements were filed
13 primarily in connection with Broadcom's acquisitions of other companies. These
14 registration statements included and/or incorporated by reference the consolidated
15 financial statements and the misrepresentations in Broadcom's Forms 10-K, 10-Q,
16 and 8-K, and Broadcom's proxy statements for the same period. In addition,
17 Broadcom conducted tender offers in 2001 and 2003. The tender offer documents
18 contained misleading statements regarding the 1998 Stock Option Plan. In
19 particular, the tender offer documents described that in-the-money options granted
20 pursuant to the Plan would result in the Company taking a compensation expense,
21 but they did not disclose that Broadcom routinely ignored that treatment of its
22 stock options. The tender offer documents also incorporated the false financial
23 statements included in Broadcom's Forms 10-K for the period.

24 77. Nicholas reviewed and signed the registration statements from 1998
25 through 2002. Samueli and Ruehle reviewed and signed the registration statements
26 from 1998 through 2005. Ruehle and Dull caused the registration statements to be
27 prepared, and they reviewed them. Nicholas, Samueli, Ruehle, and Dull knew, or
28 were reckless in not knowing, that the registration statements that they reviewed

1 and/or signed contained and/or incorporated by reference materially false and
2 misleading statements and disclosures.

3 **4. Misrepresentation to Auditors by Nicholas and Ruehle**

4 78. Nicholas and Ruehle misled Broadcom's outside auditors in an
5 attempt to hide their backdating scheme at Broadcom.

6 79. In their capacity as Broadcom's CEO and CFO, Nicholas and Ruehle
7 signed management representation letters to Broadcom's auditors in connection
8 with their audits of Broadcom's periodic reports and other filings. Nicholas signed
9 the management representation letters from 1999 through 2002, and Ruehle signed
10 the management representation letters from 1999 through 2005. These letters
11 falsely represented that Broadcom's financial statements were presented in
12 conformity with GAAP, and that there had been no fraud involving management or
13 employees who had significant roles in internal controls. The management
14 representation letters between August 2002 and May 2003 included false
15 information concerning the dates of UWCs for the option and compensation
16 committees. In addition, the representation letter dated March 15, 2002 contains a
17 false option grant date.

18 80. Nicholas and Ruehle knew, or were reckless in not knowing, that they
19 made materially false and misleading statements in the management representation
20 letters provided to Broadcom's auditors.

21 **5. False Books and Records at Broadcom**

22 81. During the period from June 1998 through May 2003, Nicholas and
23 Samueli signed false option committee UWCs for backdated grants. During that
24 same period, Ruehle provided false grant dates and facilitated the false
25 documentation of grant dates. Nicholas and Samueli also signed a backdated board
26 UWC replacing a compensation committee member in order to conceal the
27 backdating of the purported October 19 and December 24, 2001 grants to Section
28 16 officers. Dull directed a subordinate to prepare, and Dull reviewed and

1 approved the false board and compensation committee UWCs in order to conceal
2 the backdating of the purported October 19 and December 24, 2001 grants. All
3 Defendants knew that the backdated UWCs were relied upon by employees in
4 Broadcom's finance and shareholder services departments to record option grants
5 into Broadcom's books and records, and to prepare Broadcom's financial results
6 and public filings.

7 82. Broadcom, as directed by Ruehle, also provided the false
8 documentation of stock option grants to Broadcom's external auditors in
9 connection with their audits of Broadcom's financial statements. Nicholas and
10 Ruehle knew that the documentation was provided to the external auditors and
11 provided false management representation letters to the auditors.

12 83. In June 1999, Nicholas falsified an offer letter and directed the
13 falsification of personnel records in order to conceal the fact that Broadcom
14 granted backdated options to a newly hired employee.

15 84. As a result of the misconduct of Nicholas, Samueli, Ruehle, and Dull,
16 Broadcom's books and records falsely and inaccurately reflected, among other
17 things, the dates of option grants, the Company's stock-based compensation
18 expenses, the Company's operating results, and at least one employee's hire date.
19 Additionally, Nicholas, Samueli, and Ruehle knowingly circumvented internal
20 accounting controls and, together with Dull, failed to maintain a system of internal
21 accounting controls sufficient to provide assurances that stock option grants were
22 recorded as necessary to permit the proper preparation of financial statements in
23 conformity with GAAP.

24 **I. Defendants Concealed the Backdating Scheme and Benefited From the**
25 **Fraud**

26 85. The backdating scheme, among other things, allowed Defendants to
27 (i) disguise the fact that Broadcom was paying higher compensation to executives
28 and employees by awarding them in-the-money options, and (ii) avoid having to

1 record the in-the-money portion of backdated options as a compensation expense
2 and thus avoid reducing the Company's net income, profit margin, and earnings
3 per share. Keeping the scheme secret also hid the injury to Broadcom and its
4 shareholders, which occurred when the executives and employees exercised the
5 options and made capital contributions to Broadcom that were less than the
6 executives and employees would have paid if the options had not been granted in-
7 the-money.

8 86. Nicholas, Samuelli, Ruehle, and Dull knew that Broadcom submitted
9 materially false and misleading filings with the Commission that concealed the fact
10 that it granted in-the-money options and did not record any compensation expenses
11 associated with such options. Nicholas and Ruehle also made false statements and
12 representations to Broadcom's auditors in connection with the auditors' review of
13 Broadcom's public filings.

14 87. Ruehle and Dull filed false Forms 5 with the Commission, which
15 misreported the grant dates of stock options each of them received, the expiration
16 dates of those options, and their exercise prices. Ruehle and Dull knew that
17 materially false and misleading disclosures were made in the Forms 5 that each
18 filed.

19 88. Ruehle and Dull personally benefited from the option backdating
20 scheme because they each received backdated options that were in-the-money by
21 approximately \$21.6 million and \$24.4 million, respectively. Ruehle exercised
22 some of his backdated options and reaped tangible financial benefits in the amount
23 of \$102,967. Dull exercised some of his backdated options and reaped tangible
24 financial benefits in the amount of \$1,862,708. Ruehle also received bonuses from
25 Broadcom in 2005 and 2006. Those bonuses were based in part on Broadcom's
26 positive financial performance.

1 **FIRST CLAIM FOR RELIEF**

2 **FRAUD IN THE OFFER OR SALE OF SECURITIES**

3 **Violations of Section 17(a) of the Securities Act**

4 **(Against All Defendants)**

5 89. The Commission realleges and incorporates by reference ¶¶ 1 through
6 88 above.

7 90. Nicholas, Samueli, Ruehle, and Dull, and each of them, by engaging
8 in the conduct described above, directly or indirectly, in the offer or sale of
9 securities by the use of means or instruments of transportation or communication
10 in interstate commerce or by the use of the mails:

- 11 a. with scienter, employed devices, schemes, or artifices to
12 defraud;
- 13 b. obtained money or property by means of untrue statements of a
14 material fact or by omitting to state a material fact necessary in
15 order to make the statements made, in light of the
16 circumstances under which they were made, not misleading; or
17 c. engaged in transactions, practices, or courses of business which
18 operated or would operate as a fraud or deceit upon the
19 purchaser.

20 91. By engaging in the conduct described above, Nicholas, Samueli,
21 Ruehle, and Dull violated, and unless restrained and enjoined will continue to
22 violate, Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

1 caused to be falsified Broadcom's books, records and accounts subject to Section
2 13(b)(2)(A) of the Exchange Act, 15 U.S.C. § 78m(b)(2)(A).

3 104. By engaging in the conduct alleged above, Nicholas, Samueli, Ruehle,
4 and Dull violated, and unless restrained and enjoined will continue to violate,
5 Section 13(b)(5) of the Exchange Act, 15 U.S.C. § 78m(b)(5), and Rule 13b2-1
6 thereunder, 17 C.F.R. § 240.13b2-1.

7 **SIXTH CLAIM FOR RELIEF**

8 **FALSE STATEMENT TO THE ACCOUNTANTS**

9 **Violations of Exchange Act Rule 13b2-2**

10 **(Against Nicholas and Ruehle)**

11 105. The Commission realleges and incorporates by reference ¶¶ 1 through
12 88 above.

13 106. Nicholas and Ruehle, directly or indirectly, (i) made, or caused to be
14 made, materially false or misleading statements or (ii) omitted to state, or caused
15 others to omit to state, material facts necessary in order to make statements made,
16 in light of the circumstances under which they were made, not misleading, to an
17 accountant in connection with an audit, review or examination of financial
18 statements or the preparation or filing of a document or report required to be filed
19 with the Commission.

20 107. By engaging in the conduct alleged above, Nicholas and Ruehle
21 violated, and unless restrained and enjoined will continue to violate, Exchange Act
22 Rule 13b2-2, 17 C.F.R. § 240.13b2-2.

23 **SEVENTH CLAIM FOR RELIEF**

24 **FALSE CERTIFICATION**

25 **Violations of Exchange Act Rule 13a-14**

26 **(Against Nicholas and Ruehle)**

27 108. The Commission realleges and incorporates by reference ¶¶ 1 through
28 88 above.

1 114. By engaging in the conduct alleged above, Ruehle and Dull violated,
2 and unless restrained and enjoined will continue to violate, Section 16(a) of the
3 Exchange Act, 15 U.S.C. § 78p(a), and Rule 16a-3 thereunder, 17 C.F.R. §
4 240.16a-3.

5 **NINETH CLAIM FOR RELIEF**

6 **VIOLATIONS OF COMMISSION PERIODIC**

7 **REPORTING REQUIREMENTS**

8 **Aiding and Abetting Violations of Section 13(a) of the Exchange Act**

9 **and Rules 12b-20, 13a-1, and 13a-13 thereunder**

10 **(Against All Defendants)**

11 115. The Commission realleges and incorporates by reference ¶¶ 1 through
12 88 above.

13 116. Broadcom violated Section 13(a) of the Exchange Act, 15 U.S.C. §
14 78m(a), and Rules 12b-20, 13a-1, and 13a-13 thereunder, 17 C.F.R. §§ 240.12b-
15 20, 240.13a-1, and 240.13a-13, by filing with the Commission materially false and
16 misleading periodic reports, including annual and quarterly reports on Forms 10-K
17 and 10-Q for the fiscal years from 1998 through 2005.

18 117. Nicholas, Samueli, Ruehle, and Dull knowingly provided substantial
19 assistance to Broadcom's violation of Section 13(a) of the Exchange Act, 15
20 U.S.C. § 78m(a), and Rules 12b-20, 13a-1, and 13a-13 thereunder, 17 C.F.R. §§
21 240.12b-20, 240.13a-1, and 240.13a-13.

22 118. By engaging in the conduct described above, Nicholas, Samueli,
23 Ruehle, and Dull aided and abetted Broadcom's violations, and unless restrained
24 and enjoined will continue to aid and abet violations, of Section 13(a) of the
25 Exchange Act, 15 U.S.C. § 78m(a), and Rules 12b-20, 13a-1, and 13a-13
26 thereunder, 17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13.

1 assistance to Broadcom's violation of Section 13(b)(2)(A) of the Exchange Act, 15
2 U.S.C. § 78m(b)(2)(A).

3 126. By engaging in the conduct described above, Nicholas, Samueli,
4 Ruehle, and Dull aided and abetted Broadcom's violations, and unless restrained
5 and enjoined will continue to aid and abet violations, of Section 13(b)(2)(A) of the
6 Exchange Act, 15 U.S.C. § 78m(b)(2)(A).

7 **TWELVETH CLAIM FOR RELIEF**

8 **INTERNAL CONTROLS VIOLATIONS**

9 **Violations of Sections 13(b)(2)(B) of the Exchange Act**

10 **(Against All Defendants)**

11 127. The Commission realleges and incorporates by reference ¶¶ 1 through
12 88 above.

13 128. Broadcom violated Section 13(b)(2)(B) of the Exchange Act, 15
14 U.S.C. § 78m(b)(2)(B), by failing to devise and maintain a system of internal
15 accounting controls sufficient to provide reasonable assurances that transactions
16 were recorded as necessary to permit preparation of financial statements in
17 conformity with GAAP and to maintain the accountability of assets.

18 129. Nicholas, Samueli, Ruehle, and Dull knowingly provided substantial
19 assistance to Broadcom's violation of Section 13(b)(2)(B) of the Exchange Act, 15
20 U.S.C. § 78m(b)(2)(B).

21 130. By engaging in the conduct described above, Nicholas, Samueli,
22 Ruehle, and Dull aided and abetted Broadcom's violations, and unless restrained
23 and enjoined will continue to aid and abet violations, of Section 13(b)(2)(B) of the
24 Exchange Act, 15 U.S.C. § 78m(b)(2)(B).

25 **PRAYER FOR RELIEF**

26 WHEREFORE, the Commission respectfully requests that the Court:

27 (a) Issue findings of fact and conclusions of law that Defendants
28 committed the alleged violations.

1 (b) Issue judgments, in a form consistent with Rule 65(d) of the Federal
2 Rules of Civil Procedure, permanently enjoining Nicholas, his agents, servants,
3 employees, attorneys, and those persons in active concert or participation with
4 them, who receive actual notice of the order by personal service or otherwise, from
5 violating Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), Sections 10(b),
6 13(b)(5), and 14(a) of the Exchange Act, 15 U.S.C. §§ 78j(b), 78m(b)(5), and
7 78n(a), and Rules 10b-5, 13a-14, 13b2-1, 13b2-2, and 14a-9 thereunder, 17 C.F.R.
8 §§ 240.10b-5, 240.13a-14, 240.13b2-1, 240.13b2-2, and 240.14a-9, and from
9 aiding and abetting violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of
10 the Exchange Act, 15 U.S.C. §§ 78m(a), 78m(b)(2)(A), and 78m(b)(2)(B), and
11 Rules 12b-20, 13a-1, and 13a-13 thereunder, 17 C.F.R. §§ 240.12b-20, 240.13a-1,
12 and 240.13a-13.

13 (c) Issue judgments, in a form consistent with Rule 65(d) of the Federal
14 Rules of Civil Procedure, permanently enjoining Samueli, his agents, servants,
15 employees, attorneys, and those persons in active concert or participation with
16 them, who receive actual notice of the order by personal service or otherwise, from
17 violating Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), Sections 10(b)
18 and 13(b)(5) of the Exchange Act, 15 U.S.C. §§ 78j(b) and 78m(b)(5), and Rules
19 10b-5 and 13b2-1 thereunder, 17 C.F.R. §§ 240.10b-5 and 240.13b2-1, and from
20 aiding and abetting violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of
21 the Exchange Act, 15 U.S.C. §§ 78m(a), 78m(b)(2)(A), and 78m(b)(2)(B), and
22 Rules 12b-20, 13a-1, and 13a-13 thereunder, 17 C.F.R. §§ 240.12b-20, 240.13a-1,
23 and 240.13a-13.

24 (d) Issue judgments, in a form consistent with Rule 65(d) of the Federal
25 Rules of Civil Procedure, permanently enjoining Ruehle, his agents, servants,
26 employees, attorneys, and those persons in active concert or participation with
27 them, who receive actual notice of the order by personal service or otherwise, from
28 violating Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), Sections 10(b),

1 13(b)(5), 14(a), and 16(a) of the Exchange Act, 15 U.S.C. §§ 78j(b), 78m(b)(5),
2 78n(a), and 78p(a), and Rules 10b-5, 13a-14, 13b2-1, 13b2-2, 14a-9, and 16a-3
3 thereunder, 17 C.F.R. §§ 240.10b-5, 240.13a-14, 240.13b2-1, 240.13b2-2,
4 240.14a-9, and 240.16a-3, and from aiding and abetting violations of Sections
5 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act, 15 U.S.C. §§ 78m(a),
6 78m(b)(2)(A), and 78m(b)(2)(B), and Rules 12b-20, 13a-1, 13a-11, and 13a-13
7 thereunder, 17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13.

8 (e) Issue judgments, in a form consistent with Rule 65(d) of the Federal
9 Rules of Civil Procedure, permanently enjoining Dull, his agents, servants,
10 employees, attorneys, and those persons in active concert or participation with
11 them, who receive actual notice of the order by personal service or otherwise, from
12 violating Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), Sections 10(b),
13 13(b)(5), 14(a), and 16(a) of the Exchange Act, 15 U.S.C. §§ 78j(b), 78m(b)(5),
14 78n(a), and 78p(a), and Rules 10b-5, 13b2-1, 14a-9, and 16a-3 thereunder, 17
15 C.F.R. §§ 240.10b-5, 240.13b2-1, 240.14a-9, and 240.16a-3, and from aiding and
16 abetting violations of Sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the
17 Exchange Act, 15 U.S.C. §§ 78j(b), 78m(a), 78m(b)(2)(A), and 78m(b)(2)(B), and
18 Rules 10b-5, 12b-20, 13a-1, 13a-11, and 13a-13 thereunder, 17 C.F.R. §§ 240.10b-
19 5, 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13.

20 (f) Enter an order, pursuant to Section 20(e) of the Securities Act, 15
21 U.S.C. § 77t(e), and/or Section 21(d)(2) of the Exchange Act, 15 U.S.C.
22 § 78u(d)(2), prohibiting Nicholas, Samueli, Ruehle, and Dull from acting as an
23 officer or director of any issuer that has a class of securities registered pursuant to
24 Section 12 of the Exchange Act, 15 U.S.C. § 78l, or that is required to file reports
25 pursuant to Section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d).

26 (g) Order Ruehle and Dull to disgorge all ill-gotten gains from their
27 illegal conduct, together with prejudgment interest thereon.

28 (h) Order Nicholas, Samueli, Ruehle, and Dull to pay civil penalties

1 pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and/or Section
2 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

3 (i) Order Nicholas and Ruehle to repay bonuses and stock sale profits
4 pursuant to Section 304 of the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7243.

5 (j) Retain jurisdiction of this action in accordance with the principles of
6 equity and the Federal Rules of Civil Procedure in order to implement and carry
7 out the terms of all orders and decrees that may be entered, or to entertain any
8 suitable application or motion for additional relief within the jurisdiction of this
9 Court.

10 (k) Grant such other and further relief as this Court may determine to be
11 just and necessary.

12 DATED: May 13, 2008



JUNLING MA
Attorney for Plaintiff
Securities and Exchange Commission

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