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

15 IN RE BROADCOM) Lead Case No.SA 15 CV 00979 JVS
CORPORATION) (PJWx)
16 STOCKHOLDER LITIGATION)
17) **SECOND AMENDED**
18) **CONSOLIDATED CLASS**
THIS DOCUMENT RELATES) **ACTION COMPLAINT**
19 TO:)
20 ALL ACTIONS.)

1 proxy in violation of §§14(a) and 20(a) of the Securities Exchange Act of 1934
2 (the “Exchange Act”) and SEC Rule 14a-9 promulgated thereunder.

3 2. Broadcom is a semiconductor company based in Irvine, California
4 that manufactures networking and communications equipment for wired and
5 wireless technology. The Company was founded in 1991 by Defendants Henry
6 Samueli (“Samueli”), the Company’s current Chief Technical Officer (“CTO”) and
7 Chairman of the Board, and Henry T. Nicholas III (“Nicholas”), the Company’s
8 former President and Chief Executive Officer (“CEO”). Together, Samueli and
9 Nicholas own approximately 8.2% of the Company’s outstanding common stock
10 (including 99% of the outstanding Class B common shares) and maintain control
11 of nearly 50% of the total voting power of all Broadcom Common Shares. Under
12 California law, Samueli and Nicholas, as holders of almost all of the Class B
13 common stock, were required to separately approve the merger, thereby giving
14 them control of the terms of the Transaction.
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16 3. In October 2014, Broadcom began discussions with Avago
17 concerning a merger of the two companies. At the time, Avago, a developer and
18 supplier of analog, digital and mixed signal technologies incorporated in Singapore
19 with corporate offices in San Jose, California, was in the middle of a frantic
20 acquisition spree. In the twelve months leading up to May 2015, Avago would
21 acquire LSI Technologies, Emulex Corporation and PLX Technology, Inc. for a
22 total of \$7.515 billion in cash and stock, and was looking to add Broadcom to that
23 list.

24 4. Avago’s first proposal on October 10, 2014, was a simple cash and
25 stock merger whereby Broadcom’s shareholders, both Class A and B, would
26 receive \$47.00 per share, 55% in cash and 45% in Avago stock. Broadcom’s
27 Board, knowing that the Company was valued far higher than that, rejected the
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1 offer. Avago's second proposal provided for consideration of \$51.00 per share,
2 again with approximately half of the consideration in cash and the other half in
3 Avago ordinary shares. Avago's first two proposals would have treated all holders
4 of Broadcom's Class A and Class B shares equally by permitting them to select
5 any combination of cash and shares, subject to proration.

6 5. On October 27, 2014, following a meeting of Broadcom's board of
7 directors, Defendants McGregor and Brandt met with Avago to discuss the
8 potential transaction. During that meeting, Broadcom also asked Avago to
9 increase the per share price of its offer. It was not until April 10, 2015, however,
10 that Avago's board of directors authorized management to re-approach Broadcom
11 and convey a new acquisition proposal with a higher per share offer than its
12 previous offer.

13 6. Avago's new proposal, sent to Broadcom on April 13, 2015, provided
14 for the acquisition of Broadcom's outstanding shares in exchange for \$51.00 per
15 share, with one-half of the consideration in cash and one-half of the consideration
16 in Avago ordinary shares, using a fixed exchange ratio.

17 7. Avago's April 13, 2015 proposal treated all holders of Broadcom's
18 Class A and Class B shares equally, entitling both share classes to select any
19 combination of cash and shares, subject to proration. The proposal also required
20 that the principal holders of Broadcom's Class B shares, defendants Samueli and
21 Nicholas, who own over 99% of the Class B shares and nearly 50% of the total
22 voting power, execute voting agreements in support of the deal.

23 8. On April 21, 2015, Broadcom's Board held a meeting during which
24 the Company's financial advisor, J.P. Morgan, made a financial presentation
25 concerning the terms of Avago's April 13, 2015 proposal. After the presentation,
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1 the Board directed management to only engage in further discussions with Avago
2 if Avago increased its price above the mid-\$50 range.

3 9. After conveying this demand to Avago, Avago again increased its
4 proposed consideration to \$54.50 per share and required that Broadcom's Class B
5 Holders, Defendants Samueli and Nicholas, enter into support agreements which
6 required them to vote in support of the Avago merger and against any alternative
7 proposals.

8 10. This requirement of Avago was necessary because of California
9 Corporation Code §1201(a) which requires a separate vote by each class of a
10 corporation's shares to approve a merger or reorganization. As a result,
11 Defendants Samueli and Nicholas, and their 99% holdings of Broadcom's Class B
12 shares, had veto power over any planned merger.

13 11. Armed with that veto power, from the outset Defendant Samueli
14 sought special consideration for himself and the Class B shareholders, *i.e.*,
15 Defendant Nicholas, namely 100% stock consideration for his sizable interest in
16 Broadcom. However, Avago had made it clear to Broadcom and its advisors,
17 including Evercore, that Avago was interested in a 50/50 cash and stock merger
18 consideration.

19 12. Samueli and Nicholas preferred a structure that would give them no
20 cash so that they would have no obligation to pay taxes on any cash received and
21 that would not be subject to proration. To this end, Samueli engaged in
22 negotiations directly with Avago seeking an alternative structure that would give
23 the Class B shareholders the special consideration they were after in order agree
24 that he and Nicholas would execute support agreements in favor of the deal.
25

26 13. On or about May 5, 2015, Samueli provided Broadcom with the terms
27 by which he would be willing to enter into the necessary support agreement. The
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1 terms stated that the Class B shareholders only, principally Samueli and Nicholas,
2 should be allowed to exchange their Class B shares for restricted limited
3 partnership units in the newly-formed company -- thereby excluding them from
4 any cash consideration and avoiding tax liability until they sold their shares years
5 in the future. Samueli also demanded that any merger consideration paid to Class
6 B holders would not be subject to any proration, unlike the consideration paid to
7 Class A holders.

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9 14. This information was communicated to the entire Broadcom Board,
10 according to Defendant Handel, at the May 11, 2015 meeting of the Board. Prior
11 to this, discussions concerning the Restricted Exchangeable Units were between
12 Samueli and Avago and did not include the Board.

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14 15. In light of Defendant Samueli's proposal seeking different
15 consideration than what was being offered to the Class A shareholders, Broadcom
16 created a Special Committee made up of all Board members except for Samueli
17 and McGregor which was tasked with negotiating the transaction, including the
18 support agreements with Samueli and Nicholas. The Special Committee retained
19 Evercore Group L.L.C. ("Evercore") as its financial advisor. Previously,
20 Broadcom's Board had retained J.P. Morgan Securities LLC ("J.P. Morgan") as its
21 financial advisor on the Transaction.

22
23 16. The Special Committee, however, was nothing more than a formality
24 to provide an appearance of independence to a process that was still dominated by
25 Samueli and Nicholas, and resulted, not in further negotiations for the benefit of
26 Class A shareholders, but rather, in a merger agreement that was in their best
27 interests rather than the Class A shareholders' or the Company's as a whole. The
28 Special Committee's only impact was to allow Class A shareholders to also elect
the Restricted Exchangeable Units, something Defendants readily acknowledged

1 public shareholders would not want and could not reasonably be expected to invest
2 in, but that further benefited Samueli and Nicholas and their approximately
3 150,000 Class A shares.

4 17. Thus, Defendant Samueli and Nicholas executed support agreements
5 in favor of the Avago Acquisition which allows for all shareholders to elect the
6 Restricted Exchangeable Units that Defendant Nicholas and Samueli were seeking,
7 an illusory provision that primarily benefitted Samueli and Nicholas who had
8 demanded such a structure that avoids them paying taxes and not having to pro-rate
9 their shares with cash consideration that is worth less than the value of their shares.

10 18. Defendants knew that “holders of Broadcom Common Shares might
11 be unwilling or unable, due to investment policies or other restrictions, to commit
12 to the holding period and other terms of the restricted exchangeable limited
13 partnership units.” S-4/A, at 89. The Special Committee, nonetheless, permitted
14 the fundamentally unfair transaction to proceed, where Class A shareholders that
15 are electing Holdco ordinary shares will be forced to take some portion of their
16 consideration in cash that is less than the value of their shares, and pay taxes on the
17 transaction.

18 19. Because the Holdco ordinary share election proposed is subject to
19 proration, but the Restricted Exchangeable Units are not, the total number of
20 ordinary shares that will be issued to shareholders is capped at 50% of the total mix
21 of consideration but the amount of Restricted Exchangeable Units is unlimited. As
22 a result, for every share that is exchanged for Restricted Exchangeable Units the
23 value of the Holdco ordinary shares in relation to both the value of Broadcom
24 shares and the value of the Restricted Exchangeable Units is unfairly diminished.

25 20. To convince shareholders that the disparate treatment of the Class A
26 shares was “fair,” the Special Committee sought a written opinion from its advisor,
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1 Evercore, that the cash and stock provisions of Avago's proposal were fair to
2 Broadcom shareholders. However, Evercore was not asked to, nor did it, provide a
3 fairness opinion as to the relative fairness of the consideration being offered to
4 those shareholders who elect cash or ordinary shares in comparison to those who
5 take the Restricted Exchangeable Units, i.e. the Class B shareholders.

6 21. Evercore did compare the relative premium realized by those
7 shareholders electing the Restricted Exchangeable Units to those who did not and
8 found that at all levels of assumed liquidity, those who received the Restricted
9 Exchangeable Units would receive at least a \$7 per share premium on their
10 consideration. Nonetheless, despite this data, the Special Committee approved the
11 terms of the Transaction. Moreover, any Class A shareholders electing to receive
12 the Restricted Exchangeable Units will further diminish the value of the ordinary
13 shares elected by those who were "unable or unwilling, due to investment policies
14 or other restrictions," to take the Restricted Exchangeable Units. Of note, Samueli
15 and Nicholas hold approximately 150,000 Class A shares.
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17 22. On May 28, 2015, Broadcom issued a press release announcing that
18 the Company had entered into a merger agreement (the "Merger Agreement") with
19 Avago whereby a newly formed company would be created, Broadcom Limited.

20 23. The May 28, 2015 press release was followed shortly by the filing of a
21 Registration Statement and Preliminary Joint Proxy Statement on form S-4 (the
22 "Preliminary Proxy Statement") with the Securities and Exchange Commission
23 ("SEC") on July 18, 2015. On September 28, 2015, after several amendments to
24 the Preliminary Proxy Statement, Broadcom and Avago jointly issued a final Joint
25 Proxy Statement and Prospectus for the Acquisition (the "Joint Proxy Statement"
26 or "S-4/A"). A special meeting of Broadcom Shareholders was called for
27 November 10, 2015 for the purposes of voting on the Acquisition.
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1 24. The Merger Agreement and Joint Proxy Statement provided that
2 Broadcom shareholders would receive approximately \$17 billion in cash and
3 approximately 140 million Avago ordinary shares. Once the deal closes, Broadcom
4 stockholders would own approximately 32% of the newly-formed company.

5 25. Under the Merger Agreement, Broadcom stockholders will receive
6 either a combination of: (i) \$54.50 per share in cash; and 0.4378 ordinary shares in
7 the newly-formed Singapore holding company, Holdco (“Holdco Ordinary
8 Shares”); or (ii) a restricted equity security that is the economic equivalent of
9 0.4378 ordinary shares of Holdco that will not be transferable or saleable for a
10 period of one to two years after closing (“Restricted Exchangeable Units” or
11 “RSUs”); or (iii) a combination thereof. Each Avago ordinary share will be
12 exchanged for one Holdco Ordinary Share. (For clarity, we have used “Avago
13 shares” as a synonym for “Holdco Ordinary Shares” herein.)
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15 26. Although shareholders are entitled to elect between the cash or
16 ordinary share consideration, there is no guarantee they will actually receive what
17 they choose, as the ordinary shares, which are worth more than the \$54.50 cash
18 option, are subject to proration, whereas those shareholders, particularly Samuelli
19 and Nicholas and their 48 million Class B Shares and 150,000 Class A shares, that
20 elect the Restricted Exchangeable Units will receive the full consideration they
21 seek.

22 27. Rather, holders of Class A common stock, which is now listed and
23 fully tradeable on NASDAQ, and thus liquid, are being coerced to surrender that
24 liquidity to receive full value for their shares, or otherwise accept less than their
25 shares are worth just so that Nicholas and Samuelli can avoid paying taxes on the
26 consideration they will receive in the Transaction.
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1 28. On October 28, 2015, Broadcom filed an amended Schedule 14A with
2 the SEC which included certain additional disclosures related to the Transaction,
3 none of which further elaborated on the creation of the Restricted Exchangeable
4 Units, which are not subject to proration with cash like the ordinary shares, or
5 Samueli and Nicholas' control over Broadcom's Board and Special Committee.

6 29. On November 10, 2015, Broadcom and Avago each held shareholder
7 meetings to vote on the Transaction. Shortly thereafter, Avago announced that
8 more than 99% of its shareholder votes had been cast in favor of the deal. When
9 Broadcom announced that its own shareholders had voted in favor of the
10 Acquisition, the Company disclosed that 79.51% of its Class A shareholders were
11 represented in person or by proxy at the vote.

12 30. On December 7, 2015, Broadcom filed Form 8-K attaching as Exhibit
13 99.1 a joint press release issued by Avago and Broadcom. The press release
14 announced that the Transaction was targeted to close on February 1, 2016 and that
15 the election date for all shareholders would be January 25, 2016.

16 31. However, the disparate treatment of the public shareholders associated
17 with the Transaction does not end with the unfair terms resulting in unfair
18 consideration for shareholders. Defendant Samueli stands to receive other benefits
19 as a result of the Acquisition. Under the Merger Agreement, Avago will name
20 Samueli and another Broadcom member to the board of the newly-formed
21 Broadcom Limited.

22 32. Other members of Broadcom's Board and senior management will
23 also be handsomely rewarded for their part in orchestrating the Transaction.
24 Indeed, through the immediate and full vesting of their stock options and restricted
25 stock units, members of the Board and management will receive more than \$200
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1 million dollars for their previously locked-up Broadcom shares upon the close of
2 the deal.

3 33. Certain directors and Company insiders are set to receive millions of
4 dollars of special “change-of-control” payments. Defendant Scott A. McGregor,
5 Broadcom’s President, CEO and director, alone stands to receive more than \$95
6 million in special “golden parachute” payments once the deal is completed.
7 Furthermore, Samueli and Nicholas, as part of the merger, will also receive
8 payment for all of their own costs and expenses, including costs of their personal
9 counsel, incurred in connection with the Transaction.

10 34. Because Samueli and Nicholas control the Company and stand on
11 both sides of the Acquisition, meaning that they are both controlling shareholders
12 of Broadcom’s Class B shares and stand to reap substantial benefits from the
13 merger including Defendant Samueli being appointed to Holdco’s board of
14 directors, they, along with the rest of the Individual Defendants, have the burden of
15 proving the entire fairness of the Acquisition. They will be unable to meet this
16 burden. While those who control the Company will receive substantial and unique
17 benefits upon the closing of the Acquisition, Broadcom’s ordinary stockholders
18 will be short-changed and their interest in the new merged entity will be
19 substantially diminished. Class A shareholders will be deprived of up to 10
20 million Holdco shares that they would have received but for the Restricted
21 Exchangeable Units that Samueli and Avago concocted and which the Broadcom
22 Board approved.

23 35. The consideration provided to shareholders is also inadequate because
24 it does not reflect Broadcom’s strong financial track record and robust growth
25 prospects. Shortly before this transaction was announced on May 28, 2015, on
26 April 21, 2015, the Company announced “double-digit percentage growth” in both
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1 net revenue and operating margin for the first quarter of 2015. Based on this
2 positive earnings report, management expected Broadcom to continue its strong
3 financial performance and “deliver top-line growth along with operating margin
4 leverage.”

5 36. The consideration is also based on assumptions that Avago’s stock
6 would be trading in the range of \$130 to \$199 a share according to J.P. Morgan.
7 *See S-4/A*, at 107.

8 37. After the April 21, 2015 earnings announcement, numerous analysts
9 pegged Broadcom’s target stock price above the consideration. At least four
10 analysts set a short-term target price for Broadcom stock as high as \$59.00-\$60.00
11 per share. Moreover, Merrill Lynch conducted a sum of the parts analysis and
12 stated that the Company was worth between \$61.00 and \$75.00 per share, stating
13 that it believed that the risks to the Company were overstated and that Broadcom’s
14 new Tomahawk switch could lead the 25 Gig Ethernet cycle in data centers.
15 Furthermore, these values do not include an acquisition premium which could
16 further increase the value of Broadcom.
17

18 38. In order to expedite the deal and lock up the Acquisition on these
19 unfair and inadequate terms, Defendants adopted numerous preclusive and onerous
20 deal protection devices, which are set forth in the Merger Agreement. These
21 provisions, which collectively precluded any competing offers for the Company,
22 including: (i) a Termination Fee of \$1 billion if the Company had accepted a
23 competing bid; (ii) a No-Solicitation clause that discouraged potentially superior
24 bids; (iii) support agreements executed by Samueli and Nicholas pledging their
25 support for the Acquisition and requiring them to vote against any competing offer;
26 and (iv) a four-day Matching Rights period during which the Avago Defendants
27 could have matched any superior proposal received by the Company. Each of these
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1 provisions was a substantial barrier to a competitive bid and, taken together, made
2 a competitive bid highly improbable.

3 39. The Board also violated their fiduciary duties to all shareholders by
4 ignoring potentially better offers that may have been available at the same time that
5 Broadcom was negotiating the Acquisition with Avago.

6 40. On May 27, 2015, prior to Broadcom's filing of the initial proxy
7 statement and Merger Agreement, the CFO of another competitor, "Company D"
8 as identified in the Proxy Statement, contacted both defendant McGregor and
9 Broadcom's CFO, defendant Brandt, to indicate Company D's interest in a
10 business combination with Broadcom. The CFO of Company D indicated that
11 while Company D was interested in doing a transaction with Broadcom, it was not
12 in the position to move quickly. Yet, despite Company D's expression of interest,
13 Broadcom's Special Committee and Board did not explore the possible alternative
14 transaction and ignored the potential for a better deal for the Company's
15 shareholders and authorized the Avago merger.
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17 41. Defendants' fiduciary violations do not end there. In order to secure
18 shareholder approval of the flawed and unfair deal, defendants filed a materially
19 false and misleading S-4/A with the SEC on September 28, 2015. The S-4/A,
20 which recommended that Broadcom stockholders vote in favor of the Acquisition,
21 omitted and/or misrepresented material information in contravention of §§14(a)
22 and 20(a) of the 1934 Act.

23 42. Specifically, the S-4/A contains materially misleading statements or
24 otherwise fails to provide material information about the Transaction, including
25 that (i) those electing to receive Restricted Exchangeable Units were going to
26 receive greater value than those electing cash or ordinary shares; (ii) the process by
27 which the Merger Agreement was negotiated, particularly the Special Committee's
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1 involvement, was flawed and controlled by Defendants Samueli and Nicholas and
2 their controlling shareholder interests (*see infra*, ¶108) (iii) Evercore and J.P.
3 Morgan’s fairness analyses at the request of the Special Committee and the Board,
4 respectively, disregarded the disparate treatment of the Restricted Exchangeable
5 Units and their exemption from proration; and (iv) the value of Class A
6 shareholders who are unwilling or unable to surrender their existing liquid
7 common stock and elect the Restricted Exchangeable Units will be further
8 diminished by Class A shareholders like Samueli and Nicholas who elect the
9 Restricted Exchangeable Units. By misrepresenting, or otherwise failing to
10 disclose this material information, Defendants disguised this patently unfair
11 consideration from shareholders in order to gain shareholder approval.

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13 43. As explained herein, the foregoing information was material to the
14 decision of Broadcom shareholders and should have been provided in advance of
15 their decision to vote on the Transaction.

16 44. As such, Defendants’ violated §§14(a) and 20(a) of the Exchange Act
17 and breached their fiduciary duty under state law to maximize shareholder value
18 and disclose all material information in connection with a merger transaction and
19 have caused Plaintiffs and the Class substantial damages.

20 **JURISDICTION AND VENUE**

21 45. This Court has jurisdiction over the Exchange Act claims asserted in
22 this action pursuant to Section 27 of the Exchange Act, 15 U.S.C. §78aa, and 28
23 U.S.C. §1331.

24 46. This Court also has jurisdiction pursuant to 28 U.S.C. §1332(a)(3)
25 because plaintiffs and defendants are citizens of different states and/or a foreign
26 state and the amount in controversy exceeds \$75,000, exclusive of interest and
27 costs, and because each of the Defendants has had extensive contacts with
28 California as either a director and/or officer of Broadcom or extensive negotiations

1 and communications within California, which makes the exercise of personal
2 jurisdiction over them proper. This action is not a collusive one designed to confer
3 jurisdiction upon a court of the United States that it would not otherwise have.

4 47. Pursuant to 28 U.S.C. §1367(a), this Court also has supplemental
5 jurisdiction over the claims asserted herein because Plaintiffs' claims form part of
6 the same case or controversy and are related to claims over which this Court has
7 original jurisdiction.

8 48. Venue in the Central District of California is proper because
9 Broadcom has a substantial presence in California and is headquartered in Irvine,
10 California, within this District. A majority of the Individual Defendants also reside
11 in this District and a substantial portion of the transaction and wrongs complained
12 of herein occurred within this District.

13 **THE PARTIES**

14 49. Lead Plaintiff Iron Workers Mid-America Pension Plan is and has
15 been a Class A stockholder of Broadcom at all times relevant hereto as set forth on
16 the attached Exhibit A, Iron Workers' Amended Certification of Securities Class
17 Action, dated November 29, 2015, Iron Workers Mid-America Pension Plan,
18 located in Lansing, Illinois, manages approximately \$600 million in assets for
19 approximately 6,400 participants.

20 50. Lead Plaintiff Oklahoma Firefighters Pension and Retirement System
21 is and has been a Class A stockholder of Broadcom at all times relevant hereto as
22 set forth on the attached Exhibit B, Oklahoma Firefighters' Amended Certification
23 of Securities Class Action, dated November 30, 2015. Oklahoma Firefighters
24 Pension and Retirement System was created by the Oklahoma legislature in 1981
25 and manages assets in excess of \$2.3 billion for more than 21,700 participants.

26 51. Additional Plaintiff New Jersey Building Laborers Statewide Pension
27 Fund is and has been a Class A stockholder of Broadcom at all relevant times, as
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1 set forth on the attached Exhibit C, New Jersey Laborers' Amended Certification
2 of Securities Class Action, dated January 14, 2016.

3 52. Non-defendant Broadcom Corporation is a California corporation
4 with principal executive offices located at 5300 California Avenue, Irvine,
5 California. Broadcom is a global leader and innovator in semiconductor solutions
6 for wired and wireless communications. The Company has one of the strongest
7 intellectual property portfolios among global fabless semiconductor suppliers, as
8 ranked by the Institute of Electrical and Electronics Engineers. Upon completion of
9 the Acquisition, Broadcom will become an indirect wholly-owned subsidiary of
10 defendants Holdco and New LP.

11 53. Defendant Scott A. McGregor ("McGregor") is Broadcom's
12 President, CEO, and a director, and has been since January 2005. Defendant
13 McGregor is a citizen of California.

14 54. Defendant Henry Samueli, a citizen of California, is and has been
15 Broadcom's CTO since December 2009 and Broadcom's Chairman of the Board
16 since May 2012. He is also a co-founder of Broadcom. From May 2003 to May
17 2008, Defendant Samueli served as Broadcom's Chairman of the Board, and from
18 August 1991 to May 2008 as Broadcom's CTO. From August 1991 to March
19 2003, Defendant Samueli also served as Broadcom's Vice President of Research
20 and Development. As part of the Transaction, Samueli entered into a support
21 agreement with Defendant Avago, pursuant to which he agreed to vote his shares
22 in favor of the Acquisition and against any competing proposals in exchange for,
23 as detailed herein, tax-free restricted units that provided a far greater value than the
24 cash and ordinary share consideration alternatives, and certain other benefits.

25 55. Defendant Henry Nicholas, a citizen of California, is a co-founder of
26 Broadcom and was Broadcom's President, CEO, and Co-Chairman of the Board
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1 from 1991 to January 2003. As part of the Transaction, Defendant Nicholas
2 entered into a support agreement with Defendant Avago, pursuant to which he
3 agreed to vote his shares in favor of the Acquisition and against any competing
4 proposals in exchange for, as detailed herein, tax-free restricted units that provided
5 a far greater value than the cash and ordinary share consideration alternatives, and
6 certain other benefits. Nicholas and Samueli together control approximately 47%
7 of the voting power of the Company, and more than 99% of the Class B shares
8 which carry 10 votes each, a de facto controlling block.

9
10 56. Defendant Robert E. Switz (“Switz”) has been Broadcom’s “Lead
11 Independent Director” since May 2014, and has been a director since May 2003.

12 57. Defendant Eric K. Brandt (“Brandt”) is a citizen of California and has
13 been Broadcom’s Chief Financial Officer (“CFO”) since March 2007 and is and
14 has been Executive Vice President since February 2010.

15 58. Defendant John E. Major (“Major”) is a citizen of California and has
16 been a Broadcom director since January 2003. Defendant Major was also
17 Chairman of the Board from May 2008 to May 2012 and was “Lead Independent
18 Director” from May 2008 to May 2014.

19 59. Defendant Nancy H. Handel (“Handel”) is a citizen of California and
20 has been a Broadcom director since November 2005.

21 60. Defendant Robert J. Finocchio (“Finocchio”) is a citizen of California
22 and has been a Broadcom director since December 2011.

23 61. Defendant Maria M. Klawe (“Klawe”) is a citizen of California and
24 has been a Broadcom director since May 2011.

25 62. Defendant Eddy W. Hartenstein (“Hartenstein”) is a citizen of
26 California and has been a Broadcom director since June 2008.
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1 63. Defendant William T. Morrow (“Morrow”) is a citizen of California
2 and has been a Broadcom director since June 2008.

3 64. Defendant Avago Technologies Limited or Avago is incorporated
4 under Singapore law. Once the Transaction is completed, defendant Avago will
5 become an indirect wholly-owned subsidiary of defendants Holdco and New LP.
6 Defendant Avago is a citizen of Singapore.

7 65. Defendant Pavonia Limited, or Holdco, is incorporated under
8 Singapore law. Once the Transaction is completed, Holdco will be renamed
9 Broadcom Limited and will be the sole general partner of New LP. Defendant
10 Holdco is a citizen of Singapore.

11 66. Defendant Safari Cayman L.P., or New LP, is incorporated under the
12 laws of the Cayman Islands and is a direct wholly-owned subsidiary of defendant
13 Holdco. Defendant New LP will be the sole general partner of Broadcom Limited.
14 Defendant New LP is a citizen of the Cayman Islands.

15 67. Defendant Avago Technologies Cayman Holdings Ltd., or
16 Intermediate Holdco is an exempted company organized under the laws of the
17 Cayman Islands and is a direct wholly-owned subsidiary of New LP. Defendant
18 Intermediate Holdco is a citizen of the Cayman Islands.

19 68. Defendant Avago Technologies Cayman Finance Limited, or Finance
20 Holdco, is organized under the laws of the Cayman Islands and is a direct wholly-
21 owned subsidiary of defendant Intermediate Holdco. Pursuant to the Merger
22 Agreement, all ordinary shares of Avago will be transferred to Finance Holdco.
23 Defendant Finance Holdco is a citizen of the Cayman Islands.

24 69. Defendant Buffalo CS Merger Sub, Inc., or Cash/Stock Merger Sub, is
25 a California corporation and wholly-owned subsidiary of Finance Holdco. Once
26 the Transaction is completed, Defendant Cash/Stock Merger Sub will merge with
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1 and into Broadcom and cease its separate corporate existence. Defendant
2 Cash/Stock Merger Sub is a citizen of California.

3 70. Defendant Buffalo UT Merger Sub, Inc., or Unit Merger Sub, is a
4 California corporation and wholly-owned subsidiary of Finance Holdco. Once the
5 Transaction is completed, Defendant Unit Merger Sub will merge with and into
6 Broadcom and cease its separate corporate existence. Defendant Unit Merger Sub
7 is a citizen of California.

8 **DEFENDANTS' FIDUCIARY DUTIES**

9 71. In any situation where the directors of a publicly traded corporation
10 undertake a transaction that will result in either (i) a change in corporate control or
11 (ii) a break-up of the corporation's assets, the directors have an affirmative
12 fiduciary obligation to obtain the highest value reasonably available for the
13 corporation's shareholders, and if such transaction will result in a change of
14 corporate control, the shareholders are entitled to receive a significant premium. To
15 diligently comply with these duties, the directors may not take any action that:

- 16 a. adversely affects the value provided to the corporation's
17 shareholders;
- 18 b. discourages or inhibits alternative offers to purchase control of the
19 corporation or its assets;
- 20 c. contractually prohibits them from complying with their fiduciary
21 duties;
- 22 d. otherwise adversely affects their duty to search and secure the best
23 value reasonably available under the circumstances for the
24 corporation's shareholders; and/or
- 25 e. provides the directors with preferential treatment at the expense of, or
26 separate from, the public shareholders.

27
28 72. In accordance with their duties of loyalty and good faith, the

1 Individual Defendants, as directors and/or officers of Broadcom, are obligated to
2 refrain from:

- 3 a. participating in any transaction where the directors' or officers'
4 loyalties are divided;
- 5 b. participating in any transaction where the directors or officers will
6 receive a personal financial benefit not equally shared by the public
7 shareholders of the corporation; and/or
8 c. unjustly enriching themselves at the expense or to the detriment of
9 the public shareholders.

10 73. The Individual Defendants are also required to disclose fully and
11 fairly all material information within their custody and control regarding the
12 corporate transaction at issue, the consideration offered for the shareholders' equity
13 interests, and the intrinsic value of the Company and its future prospects.

14 74. Plaintiffs allege herein that defendants, separately and together, in
15 connection with the Acquisition, are breaching and/or aiding and abetting in the
16 breaches of fiduciary duties owed to plaintiffs and the other public shareholders of
17 Broadcom, including the duties of loyalty, good faith, candor, due care and
18 independence. As a result of these breaches of fiduciary duties and the aiding and
19 abetting therein, neither plaintiffs nor the Class will receive adequate or fair value
20 for their Broadcom common stock in the Acquisition.

21 75. Specifically, in any situation where controlling shareholders compete
22 with minority shareholders for consideration, the entire fairness standard is
23 implicated, and the defendants bear the initial burden of demonstrating the two
24 basic aspects of fair dealing and fair price.

25 76. The concept of fair dealing embraces questions of when the
26 transaction was timed, how it was initiated, structured, negotiated, disclosed to the
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28

1 directors, and how the approvals of the directors and the stockholders were
2 obtained. The concept of fair price relates to the economic and financial
3 considerations of the Acquisition, including all relevant factors: assets, market
4 value, earnings, future prospects, and any other elements that affect the intrinsic or
5 inherent value of a company's stock. The test for fairness is not a bifurcated one as
6 between fair dealing and price. All aspects of the issue must be examined as a
7 whole since the question is one of entire fairness.

8 77. To demonstrate entire fairness, the Individual Defendants must
9 present evidence of the cumulative manner by which they discharged all of their
10 fiduciary duties. An entire fairness analysis then requires the Court to consider
11 carefully how the Board discharged all of its fiduciary duties with regard to each
12 aspect of the non-bifurcated components of entire fairness: fair dealing and fair
13 price.
14

15 **CONTROL ALLEGATIONS**

16 78. Defendants Samueli and Nicholas founded Broadcom in 1991.
17 Samueli currently serves as Broadcom's CTO and has served in that position since
18 December 2009. Since May 2013, Samueli has served as Chairman of Broadcom's
19 Board. Defendant Nicholas served as the Company's President, CEO, and Co-
20 Chairman of the Board from 1991 to January 2003.

21 79. More importantly, Defendants Samueli and Nicholas are Broadcom's
22 largest shareholders. As of June 30, 2015, Defendant Samueli owned 101,070
23 Broadcom Class A common shares and 21,745,402 Broadcom Class B common
24 shares, while Defendant Nicholas owned 49,973 Broadcom Class A common
25 shares and 26,170,868 Broadcom Class B common shares. Together, Samueli and
26 Nicholas own approximately 8.2% of the Company's outstanding common stock
27 (including 99% of the outstanding Class B common shares) and maintain control
28 of approximately 47% of the total voting power of all Broadcom Common Shares

1 because each Class B share carries 10 votes to one vote per Class A share.

2 80. Because of their dominant ownership of the Company's shares,
3 Defendants Samueli and Nicholas exercise control over the outcome of the
4 elections for the Company's Board and the Board's decision-making. Thus, each
5 director, including each of the Individual Defendants, serves at the whim of
6 Samueli and Nicholas.

7 81. Indeed, the Individual Defendants described Samueli's and Nicholas'
8 effective control over corporate matters in the Company's most recent 10-K, filed
9 on January 29, 2015, which stated: "Our co-founders and their affiliates may
10 strongly influence the outcome of matters that require the approval of
11 shareholders." The 10-K also reported the following:

12 As of December 31, 2014 our co-founders, directors, executive
13 officers and their respective affiliates beneficially owned 8.8% of our
14 outstanding common stock and held 47.3% of the total voting power
15 held by our shareholders. As a result, the voting power of these
16 shareholders may strongly influence the outcome of matters that
17 require the approval of our shareholders, including the election of our
18 Board of Directors and certain significant corporate transactions. In
19 particular, as of December 31, 2014 our two founders, Dr. Henry T.
20 Nicholas III and Dr. Henry Samueli, beneficially owned a total of
8.2% of our outstanding common stock and held 47.0% of the total
voting power held by our shareholders. Because of their significant
voting stock ownership, we may not be able to engage in certain
actions or transactions, without the approval of one or both of these
shareholders.

21 82. Defendant Samueli not only controlled the Board through his ability
22 to control the elections of directors and matters involving shareholder voting, he
23 was also involved in the day-to-day operations and management of Broadcom by
24 virtue of his position as the Company's CTO and Chairman.

25 83. Defendant Samueli's involvement in the day-to-day operations and
26 management of the Company is further demonstrated by the fact that in 2014 and
27 2015, he personally met with representatives of Avago and other potential
28 acquirors to discuss strategic combinations involving Broadcom. Samueli's

1 leadership role in the Company is also highlighted by the fact that his name and
2 titles appear prominently in the introduction section of the July 29, 2015 Joint
3 Proxy Statement/Prospectus, which informed the Company's shareholders of the
4 upcoming shareholder vote to approve the Acquisition.

5 84. Accordingly, Defendants Samueli and Nicholas had common control
6 over the Acquisition, thus providing plaintiffs with the ability to attack the validity
7 of the merger pursuant to California Corporations Code §1312(b), in accordance
8 with the procedures set forth in California Corporations Code §1312(c).

9 85. Furthermore, as a result of California Corporation Code §1201(a),
10 which requires a separate vote of each class of a corporation's shares to approve a
11 merger, Defendant Samueli and Nicholas controlled the outcome of negotiations
12 regarding the Transaction because they had veto power over the Transaction by
13 virtue of their control of the vote of the Class B shares.

15 **SUBSTANTIVE ALLEGATIONS**

16 **Avago Proposes a Cash And Stock Acquisition**

17 86. Broadcom is one of the largest semiconductor companies in the world.
18 Broadcom designs and develops semiconductor solutions for wired and wireless
19 communications and contracts with independent chip-making facilities to
20 manufacture them. Broadcom holds more than 10,940 U.S. and 3,925 foreign
21 patents. The Company employs more than 10,000 employees worldwide,
22 thousands of whom are based out of its Irvine, California headquarters.

23 87. In December 2013, Broadcom began discussions with several
24 companies concerning a potential sale of Broadcom's business. After nearly a full
25 year of discussions with other companies, on October 10, 2014, Avago, through its
26 director, Ken Hao, contacted Broadcom to express interest in a possible acquisition
27 of Broadcom by Avago. Avago's offer provided that Broadcom's Class A and B
28

1 would each receive \$47.00 per share consideration, 55% of which would be in cash
2 and 45% of which would be in Avago stock.

3 88. On October 27, 2014, following a meeting of Broadcom's board of
4 directors, Defendants McGregor and Brandt met with Avago to discuss the
5 potential transaction. During that meeting, Broadcom also asked Avago to
6 increase the per share price of its offer. It was not until April 10, 2015, however,
7 that Avago's board of directors authorized management to re-approach Broadcom
8 and convey a new acquisition proposal with a higher per share offer than its
9 previous offer.

10 89. Avago's new proposal, received on April 13, 2015, provided for the
11 acquisition of Broadcom's outstanding shares in exchange for \$51.00 per share,
12 with one-half of the consideration in cash and one-half of the consideration in
13 Avago ordinary shares, using a fixed exchange ratio.

14 90. Avago's April 13, 2015 proposal treated all holders of Broadcom's
15 Class A and Class B shares equally, entitling both share classes to select any
16 combination of cash and shares, subject to proration. The proposal also required
17 that the principal holders of Broadcom's Class B shares, defendants Samueli and
18 Nicholas, who own over 99% of the Class B shares and nearly 50% of the total
19 voting power, execute voting agreements in support of the deal.

20 91. On April 21, 2015, Broadcom's Board held a meeting during which
21 the Company's financial advisor, J.P. Morgan, made a financial presentation
22 concerning the terms of Avago's April 13, 2015 proposal. After the presentation,
23 the Board directed management to only engage in further discussions with Avago
24 if Avago increased its price above the mid-\$50s.

25 92. On April 24, 2015, Avago submitted a revised proposal below the
26 price Broadcom's Board had determined was appropriate, proposing to acquire the
27
28

1 shares of Broadcom Class A and Class B common stock for \$54.50 per share, with
2 each holder of Class A and Class B stock entitled to receive consideration in the
3 form of cash, ordinary shares of Avago, or combination of cash and Avago
4 ordinary shares, subject to proration such that the overall mix of consideration
5 would be 50% cash and 50% stock.

6 93. Importantly, Avago's third proposal once again provided that the
7 consideration for the deal would be only cash or Avago ordinary shares and the
8 Class A and B holders would be treated identically on paper and in reality.

9 94. Later that day, the Board directed management to pursue Avago's
10 proposal, despite its previous directive not to engage with Avago unless the
11 company was willing to offer a price above the mid-\$50s range. From that point
12 onward, the Board and management abandoned all efforts to press for any increase
13 in price over the \$54.50 cash portion per share offered by Avago on April 24,
14 2015.

15 95. Prior to the announcement of the deal, Broadcom's shares were
16 trading at \$47.06. The \$54.50 per share cash component represented a 15.8%
17 control premium; extremely small for such a transaction.

18 96. During Broadcom's negotiations with Avago in April 2015,
19 Broadcom was experiencing surging growth and was well-positioned for sustained,
20 long-term profitability as a stand-alone company. On April 21, 2015, the company
21 announced strong financial results for the first quarter of the 2015 fiscal year.
22 During the earnings call held the same day, defendant McGregor, Broadcom's
23 President, CEO and a director, reported "double-digit percentage growth" in both
24 net revenue and operating margin for the Company's Broadband and Connectivity
25 lines of business (Broadcom's largest business segments). McGregor emphasized
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27
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1 that management expected Broadcom to continue its strong financial performance
2 and “deliver top-line growth along with operating margin leverage.”

3 **California Corporation Code Section 1201(a) Gives Samueli and Nicholas**
4 **Veto Power Over Any Transaction**

5 97. Under California law, a majority vote of the outstanding shares of
6 Broadcom would be insufficient to approve the Transaction.

7 98. Section 1201(a) of the California Corporations Code requires that the
8 “principal terms of a reorganization” must be approved by the outstanding shares
9 of *each* class of the corporation’s stock.

10 99. As a result, regardless of how the Class A shareholders voted, the
11 Transaction could not be approved without the approval of Defendants Samueli
12 and Nicholas who owned 99% of the Class B shares.

13 100. Because of this, Avago’s proposal included a requirement that support
14 agreements signed by Defendants Nicholas and Samueli be executed in order for
15 the deal to progress.

16 101. In any event, Nicholas, Samueli and the members of the Broadcom
17 board controlled 50.73 million shares, including nearly all of the Class B common
18 stock giving them nearly 50% voting control over the outcome, and veto power
19 due to their control of the Class B shares.

20 **Broadcom Bends to the Demands of Defendants Samueli and Nicholas**

21 102. From the outset, it was clear to Broadcom and its advisors that
22 Samueli was looking for 100% stock consideration for the Class B shareholders’
23 Broadcom interests.

24 103. By early May 2015, the Board and Avago began negotiating with
25 defendants Samueli and Nicholas, as the majority holders of Class B stock, to get
26 their support for the potential acquisition. Samueli and Nicholas collectively held
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28

1 nearly 48 million shares of Class B stock and stood to gain more than \$2.6 billion
2 in total value from just their Class B shares alone once the deal closed. However,
3 Samueli and Nicholas, knowing that the deal was impossible without their support,
4 and concerned with the fact that they would have an immediate tax liability on the
5 cash portion of consideration, and possibly for the entire consideration that was
6 currently being offered, refused to support the proposal without special
7 consideration for the Class B shareholders, *i.e.*, themselves.

8
9 104. Under IRS rules, stock mergers of two U.S. companies are typically
10 tax free to shareholders. But because Avago is a Singapore-based company, IRS
11 rules governing domestic mergers may not apply, and any potential merger
12 between Avago and Broadcom involving the exchange of shares (or the payment
13 of cash) could be taxable to Broadcom's U.S. shareholders, particularly if the IRS
14 deems Broadcom to be larger than Avago by the time the deal closes.

15 105. Thus, any merger transaction between Broadcom and Avago
16 involving a share-for-share exchange, the payment of cash, or the combination of
17 both, could have substantial tax implications to defendants Samueli and Nicholas,
18 who collectively own more than 8% of Broadcom's Class A shares. Samueli and
19 Nicholas therefore sought to protect their own interests by actively negotiating
20 directly with Avago -- going around the Broadcom Board and the Special
21 Committee -- a deal that would be most advantageous to them from a tax and
22 control perspective, instead of pursuing a deal that would be in the best interest of
23 Broadcom's public shareholders.

24 106. In fact, it was not until Samueli approached Broadcom on May 5,
25 2015 that Broadcom's Board was even aware of his interest in creating an
26 alternative form of payment that would give Samueli and Nicholas tax-free, all
27 stock consideration in the form of Restricted Exchangeable Units.
28

1 107. On or about May 5, 2015, Defendant Samueli indicated to Broadcom
2 that he would only be willing to enter into an agreement supporting the Acquisition
3 if Avago were willing to allow holders of Class B common stock (of which
4 Samueli and Nicholas owned 99%) to exchange their Class B shares for restricted
5 limited partnership units in the newly-formed company. Under Samueli's proposal,
6 Class B holders would not receive any cash as merger consideration. The purpose
7 of Samueli's proposal was clear – by specifically excluding any cash merger
8 consideration, Samueli sought to roll over his Class B shares into the newly-
9 formed company and defer any tax liability that would arise from the payment of
10 cash. To further assure this tax-avoidance strategy and benefit himself at the
11 expense of Class A shareholders, Samueli also demanded that any merger
12 consideration paid to Class B holders would not be subject to any proration with
13 the cash component, unlike the consideration paid to Class A holders. Samueli's
14 proposal was communicated to Broadcom's full Board, according to Defendant
15 Handel, at the May 11, 2014 Board meeting. Prior to this, the Board was not
16 involved in negotiations or discussions concerning special consideration for the
17 Class B shareholders.
18

19 108. Defendant Nicholas likewise indicated that he wanted to receive all
20 equity consideration and no cash as part of any transaction with Avago. Nicholas,
21 the former President and CEO of Broadcom, went a step further and demanded that
22 Avago pay him more per-share consideration than would be paid to the Broadcom
23 Class A shareholders, who comprised the vast majority of the public shareholders
24 of the Company. Nicholas sought to be paid more consideration for his Class B
25 shares, despite prior representations by Broadcom which assured holders of Class
26 A and Class B common stock would be treated equally in the event of a merger
27 transaction.
28

1 109. Due to the disparate treatment of the Class A and B shareholders that
2 Defendants Samueli and Nicholas were seeking and which Samueli had proposed
3 to Broadcom in his May 5, 2014 proposal and at the May 11, 2014 Board meeting,
4 the Board formed a Special Committee to negotiate the transaction, including the
5 support agreements. The Special Committee was comprised of all of Broadcom's
6 Board except Defendants Samueli and McGregor. Evercore was retained as the
7 Special Committee's "independent" financial advisor.

8 110. From the outset, the Special Committee's primary intent was to
9 negotiate a transaction that would ensure that Samueli and Nicholas would sign the
10 necessary support agreements. The Special Committee did not seek a higher price
11 or a different structure to mitigate the disparate treatment between Class A and
12 Class B stockholders. As a result, the Special Committee's actions resulted in
13 Samueli and Nicholas obtaining transaction compensation that was in their best
14 interest as opposed to the best interests of all of Broadcom's shareholders. The
15 Special Committee ultimately capitulated to Samueli's veto power, approving the
16 alternative of Restricted Exchangeable Units for Broadcom stockholders. The
17 Acquisition also includes several special payments for Broadcom's Board and
18 management, including more than \$95 million in golden parachute payments of
19 McGregor alone and hundreds of millions of dollars in vested options for the
20 Board and senior management. S-4/A, at 139.

21 111. On May 25, 2015, the Special Committee held a meeting to
22 specifically discuss, among other things, the possibility of providing different
23 consideration to Class B shareholders (*i.e.*, Samueli and Nicholas) as compared
24 with holders of Broadcom's Class A shareholders, "in order to secure the support
25 of Dr. Samueli and Dr. Nicholas, and their execution of the support agreement
26 which was being requested by both Broadcom and Avago." S-4/A, at 89.
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1 112. However, as per Broadcom's filings in connection with its initial
2 public offering years earlier, the Company had represented that in case of any
3 merger or acquisition, "the consideration to be received per share by holders of
4 Class A common stock is identical to that to be received by holders of Class B
5 common stock." Broadcom Corp., Form 424(b)(4) Prospectus, at 58 (filed April
6 16, 1998). The solution, however, was to actually provide even more benefits to
7 Samueli and Nicholas, allowing them to also convert their Class A shares to
8 Restricted Exchangeable Units.

9 113. On May 26, 2015, Avago submitted what would be its final proposal,
10 which was based on the tax-advantaged structure proposed by Defendant Samueli
11 on May 5-6, 2015. Avago's proposal now contemplated that holders of both
12 Broadcom Class A common stock and Class B common stock would have the
13 option of obtaining the same forms of merger consideration, either cash, ordinary
14 shares in the newly-formed company (Holdco Ordinary Shares), the combination
15 of cash and Avago common stock, or restricted exchangeable limited partnership
16 units (Restricted Exchangeable Units), which after a strict holding period, could be
17 exchanged for shares of Avago common stock. Additionally, as part of its
18 proposal, Avago agreed to designate Samueli and one other member of
19 Broadcom's Board to the board of the new company. Separately, Broadcom
20 agreed to reimburse Nicholas and Samueli for all of their expenses incurred in
21 connection with the Acquisition.
22

23 114. Under Avago's proposal, the cash and common stock consideration
24 were subject to proration depending on the percentage of stockholders electing
25 each form of consideration such that the total mix of consideration will be
26 approximately 54% cash and 46% stock, while the Restricted Exchangeable Units
27 are not subject to any proration. As a result, if the Avago shares are above \$124.49,
28

1 the value of the non-prorated Restricted Exchangeable Units is far greater than the
2 value of the prorated cash and ordinary share consideration options, because
3 shareholders that elect the Restricted Exchangeable Units will receive the full
4 amount of Restricted Exchangeable Units requested, whereas those electing
5 Holdco ordinary shares will be subject to proration of their election if less than
6 54% elect cash.

7 115. Avago's proposal was contingent upon Samueli's and Nicholas'
8 agreement to execute support agreements in favor of the proposed Acquisition
9 which was obtained once the Board approved the deal structure.

10 116. Disregarding its obligation to further and protect the interests of all of
11 Broadcom's stockholders, and its own statements in Broadcom's initial public
12 offering filings that Class A and Class B shareholders would receive identical
13 consideration, the Special Committee recognized that the posited equality was a
14 fiction. Although Avago's final proposal nominally provided the holders of
15 Broadcom's Class A common stock and Class B common stock with the
16 opportunity to elect the form of merger consideration they desired, the Special
17 Committee knew that the Restricted Share election option was largely illusory as
18 holders of Broadcom Class A Shares would be unwilling or unable, due to
19 investment policies or other restrictions, to commit to the holding period and other
20 terms of the Restricted Exchangeable Units, and that the Restricted Exchangeable
21 Units would not be a prudent investment for most individual shareholders who are
22 looking for liquidity in their investments.

23 117. The Special Committee also admitted that because Defendants
24 Samueli and Nicholas wanted preferential treatment that materialized in the form
25 of the Restricted Exchangeable Units, that Samueli and Nicholas, making up
26 almost all of the holders of the Class B common stock would elect to exchange
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1 their Class B shares for Restricted Exchangeable Units, while the majority of Class
2 A shareholders would not and instead would be subject to proration. S-4/A, at 89-
3 90.

4 118. Even with this information plainly obvious to them, the Special
5 Committee made no meaningful attempt to remedy the unfairness in the transaction
6 by identifying or pursuing alternative forms of consideration that would, in action,
7 treat all shareholders equally, in order to obtain Samueli's and Nicholas' support of
8 the Acquisition. Allowing all shareholders to elect the Restricted Exchangeable
9 Units while knowing at the same time that most shareholders would be unwilling
10 or unable to do so did not make the stated terms of the Acquisition fair.

11 119. Instead, the Special Committee sought to validate the proposed
12 Acquisition by obtaining a limited opinion from its financial advisor, Evercore,
13 only as to whether the consideration of cash and/or stock to be received by
14 shareholders that do not elect to receive Restricted Exchangeable Units was fair to
15 those shareholders, from a financial point of view.

16 120. On May 27, 2015, Evercore provided a written opinion stating that the
17 merger consideration to be received by the holders of Common Shares who do not
18 elect to receive Restricted Exchangeable Units "is fair from a financial point of
19 view to such holders of Common Shares." S-4/A, at H-4. According to Naveen
20 Nataraj, a Senior Managing Director at Evercore who advised Broadcom's Special
21 Committee on the Acquisition, Evercore was not asked to, and did not provide an
22 opinion on the fairness of the Restricted Exchangeable Units to holders of
23 Common Shares. Evercore was not asked to, nor did they, provide an opinion as to
24 the *relative* fairness of the cash and ordinary share consideration that are subject to
25 proration in relation to the Restricted Exchangeable Units that are not subject to
26 proration.
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1 121. Evercore did compare the relative premium realized by those
2 shareholders electing the Restricted Exchangeable Units to those who did not and
3 found that at all levels of assumed liquidity, those who elected the Restricted
4 Exchangeable Units were receiving at least a \$7 per share premium on their
5 consideration. Even in the face of this data, the Special Committee approved the
6 terms of the Transaction. Moreover, Broadcom disregarded the fact that Class A
7 shareholders, like Samueli and Nicholas and their 150,000 Class A shares, who
8 elected to receive the Restricted Exchangeable Units, would further diminish the
9 value of the ordinary shares elected by those who were unable or unwilling to
10 accept the illiquid Restricted Exchangeable Units. Again, this is because the
11 Holdco ordinary share election proposed is subject to proration, but the election of
12 Restricted Exchangeable Units is not, and thus, for every share that is exchanged
13 for Restricted Exchangeable Units whether they be exchanged by Defendants
14 Samueli or Nicholas or by other Class A shareholders, the value of the Holdco
15 ordinary shares in relation to both the value of Broadcom shares and the value of
16 the Restricted Exchangeable Units is unfairly diminished.
17

18 122. Moreover, the Special Committee and Evercore expressly disregarded
19 any evaluation of whether the prorated cash and ordinary share option was at all
20 fair the Class A shareholders who elect Holdco ordinary shares as compared to the
21 Class B shareholders and limited number (if any) of Class A shareholders that
22 elect to receive the Restricted Exchangeable Units. Thus, Evercore's opinion
23 regarding the purported fairness of the Transaction was fatally flawed and not
24 complete for the Special Committee's consideration of whether the transaction was
25 fair as between shareholders that elected cash and stock and those that elect the
26 Restricted Exchangeable Shares.
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1 123. As reflected by their disregard of Evercore's analysis of consideration
2 premium and their lack of any attempt to receive a fairness opinion as to the
3 relative consideration, the Special Committee was well aware that the
4 consideration received by Defendants Samueli and Nicholas in the form of
5 Restricted Exchangeable Units that are not subject to proration, was more valuable
6 than the consideration received by shareholders that receive ordinary shares and
7 cash in order to maintain the liquidity of their investments, and that is subject to
8 proration such that they receive less for their shares than those that receive the
9 Restricted Exchangeable Units.

10 124. Using the cover of Evercore's limited and flawed opinion that
11 answered the wrong question, the Special Committee voted unanimously to
12 approve the Merger Agreement and the proposed Acquisition.

13 125. On May 27, 2015, the full board met to ratify the Special Committee's
14 decision. The Board unanimously approved the Merger Agreement and related
15 agreements, including the Support Agreements entered into by defendants Samueli
16 and Nicholas.

17 **Broadcom and Avago Announce the Merger Agreement**

18 126. On May 28, 2015, Broadcom and Avago announced that they had
19 entered into the Merger Agreement, pursuant to which Avago will acquire all the
20 outstanding shares of Broadcom for a total transaction consideration of \$37
21 billion. The press release summarized the benefits of the deal as follows:

22 **Avago Technologies to Acquire Broadcom for \$37 Billion**

- 23 ● Creates the world's leading diversified communications
24 semiconductor company;
- 25 ● Transaction consideration of \$17 billion in cash and equity
valued at approximately \$20 billion as of May 27, 2015;
- 26 ● \$750 million of projected annual cost synergies expected to
be achieved within 18 months;
- 27 ● Immediately accretive to non-GAAP EPS and free cash
28 flow.

1 127. On May 26, 2015, Avago closed at \$131.30, on May 27, it closed at
2 \$141.49, and in the following four weeks, its closing price ranged from \$138.63 to
3 \$148.07. On May 26, 2015, before rumors of the Acquisition hit the market,
4 Broadcom stock closed at \$47.06 per share. Following the announcement of the
5 Acquisition, on May 28, 2015, Broadcom's share price closed at \$56.25 after an
6 initial spike at \$57.16. Market analysts were skeptical of the merger, recognizing
7 that "Broadcom's co-founders and their affiliates may strongly influence the
8 outcome of matters that require the approval of their shareholders." Ladenburg
9 Thalmann, Broadcom Corporation Report, May 28, 2015, at 2.

10 **Defendants Lock Up the Transaction and Prevent Competing Offers from**
11 **Being Made**

12 128. Throughout the process which led to the announcement of the Avago-
13 Broadcom deal, from the date of Avago's initial inquiry in December 2013 until
14 the May 2015 announcement of the Transaction, Defendants overwhelmingly
15 favored the proposals put forth by Avago and ignored any other value-maximizing
16 alternatives. The Board failed to pursue reasonable due diligence and made no real
17 attempt to progress beyond cursory discussions with other interested parties which
18 were quickly pushed aside for the subpar consideration offered by Avago.

19 129. Before the Board and Special Committee approved the Avago
20 Acquisition, on May 27, 2015, the CFO of another competitor, Company D as
21 named in the Proxy Statement, contacted both defendant McGregor and
22 Broadcom's CFO, defendant Brandt, to indicate Company D's interest in a
23 business combination with Broadcom. The CFO of Company D indicated that
24 while Company D was interested in doing a transaction with Broadcom, it was not
25 in the position to move quickly. Yet, despite Company D's expression of interest,
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1 Broadcom's Special Committee and Board ignored the potential for a better deal
2 for the Company's shareholders and authorized the Avago merger.

3 130. Instead of pursuing a deal that would maximize consideration for all
4 shareholders' value, the Board pursued a deal that would be most beneficial to the
5 Company's founders, Defendants Samueli and Nicholas, and the Company's
6 executive and Board Members through the form of special payments, including
7 \$95 million in golden parachute payments that will come to Defendant McGregor.
8 As such, the Board was more willing to accept less favorable terms for public
9 shareholders so long as its desire for a tax-free deal for its insider shareholders was
10 satisfied, and the remaining Board members received tens of millions in special
11 payments.

12 131. The cash portion of the transaction of \$54.50 per share was far below
13 analysts' price targets for Broadcom that approached \$60.00 per share, not even
14 allowing for an appropriate change of control premium.

15 132. Moreover, Evercore's analysis of the fairness of the Acquisition was
16 also based on the assumption that Avago's stock price would trade at a much
17 higher price than the \$130 per share that it was trading at before the Acquisition
18 was announced. In fact, Evercore's analysis was based on Avago stock trading as
19 high as \$173.82 per share, with a median price of \$144 per share. S-4/A, at 117-
20 118.

21 133. In fact, the same was true for J.P. Morgan's analyses in their capacity
22 as advisor for Broadcom's Board. Their analysis indicated an implied per share
23 equity value range for the Avago Ordinary Shares of \$130 to \$199.75. S-4/A, at
24 107. The Special Committee was well aware, however, that the prices at which
25 Evercore and J.P. Morgan were expecting Avago's stock to trade made the
26 Acquisition entirely unfair to shareholders not electing the Restricted
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1 Exchangeable Shares because of the proration of the ordinary shares which would
2 diminish the relative value of their Broadcom stock. The disparity of value was
3 also reflected in Evercore's analysis, as discussed in more detail below, which
4 showed that the Restricted Exchangeable Units were receiving at least a \$7
5 premium over the ordinary share and cash consideration. Yet, the Special
6 Committee and the Board failed to cure this inequity in favor of consummating the
7 deal.

8
9 134. Furthermore, to expedite the deal closing and protect Avago against a
10 threat of a superior offer, as Company D may very well have offered, Defendants
11 adopted a series of unfair and restrictive devices to protect the Transaction.

12 135. First, the support agreements that the Board encouraged and
13 authorized Defendants Samueli and Nicholas to execute required them to vote their
14 more than 99% holdings of the Class B shares in favor of the Avago Transaction
15 and against any alternative proposal. Samueli and Nicholas' 48% control of all of
16 Broadcom's voting shares thus made any alternative proposal worthless once those
17 support agreements were executed and even made the November 10, 2015
18 stockholder vote a mere formality.

19 136. Second, the Merger Agreement contains a strict "No Solicitation"
20 provision that prevents Broadcom from seeking an alternative deal for its
21 shareholders. Under this provision, Broadcom was prohibited from, directly or
22 indirectly, initiating or soliciting any inquiry from a third party that could lead to a
23 competing acquisition proposal. This prohibition included the complete ban on
24 Broadcom sharing or discussing any information about the Company with any
25 party that might provide an alternative proposal to Avago's. No rational bidder
26 could make a competitive bid without such information.
27
28

1 137. Although alternative proposals were technically not prohibited by the
2 Merger Agreement, such a proposal would have had to come from a potential
3 acquirer without the benefit of any non-public information, including the
4 information that was provided to Avago and on which it based its own proposal.
5 Thus, any possibility for an alternative proposal under this format was, for all
6 intents and purposes, blocked and unlikely.

7 138. Third, Broadcom provided Avago with broad “Matching Rights” that
8 provided Avago with extensive procedural advantages over any subsequent bidder.
9 Under this provision, Broadcom agreed to promptly notify Avago (within 24
10 hours) of: (i) any competing acquisition proposal; (ii) the material terms and
11 conditions of any such proposal (and any changes thereto); (iii) the identity of the
12 party making any such proposal; and (iv) whether Broadcom’s Board determines
13 the competing acquisition proposal to be superior to the Avago transaction. And,
14 even if an unsolicited bidder were to emerge, which is highly unlikely, the
15 Matching Rights provision allows Avago four business days within which to
16 amend the terms of the Merger Agreement and make a counter offer that only
17 needs to be as favorable to the Company’s shareholders as the unsolicited offer.
18 Avago will therefore be able to match any hypothetical unsolicited offer because
19 the Merger Agreement also grants it unfettered access to the superior proposal, in
20 its entirety, thereby eliminating any leverage that the Company has as a result of
21 receiving the unsolicited offer. The matching rights would strongly discourage a
22 potential competitive bidder.
23

24 139. The Board further reduced the likelihood of obtaining a superior offer
25 or the best possible price for the Company’s public stockholders by agreeing to a
26 substantial Termination Fee. The Merger Agreement provides that Broadcom will
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28

1 be required to pay Avago a Termination Fee of \$1 billion, upon the Board's
2 acceptance of a superior proposal.

3 140. Each of these unduly restrictive deal devices, in sum, acted to prevent
4 Broadcom's ability to seek any third party proposals to acquire the Company. The
5 inclusion of these provisions in the Merger Agreement did not provide the Board
6 an effective "fiduciary out" under the circumstances. These provisions foreclosed
7 any realistic chance that any potential bidders would express interest or make
8 alternative bids in order to provide the needed market check on the Acquisition.

9 **Broadcom and Avago Shareholders Approve the Acquisition.**

10 141. On November 10, 2015, Broadcom and Avago each held special
11 shareholder meetings to vote on the proposed Acquisition. Avago announced that
12 more than 99% of Avago shareholders voted in favor of the deal. When Broadcom
13 did disclose the results of Broadcom's shareholder vote, the Company explained
14 that just 79.51% of its shareholders were in person or represented by proxy at the
15 shareholders meeting.
16

17 142. On December 7, 2015, Broadcom filed a Form 8-K with the SEC
18 attaching as Exhibit 99.1 a joint press release issued by Avago and Broadcom.
19 The press release announced that Transaction was targeted to close on February 1,
20 2016 and that the election date for all shareholders would be January 25, 2016.

21 **The Unfairly Structured Transaction Benefits Defendants Samueli and**
22 **Nicholas to the Detriment of Cash and Ordinary Share Electing Shareholders**

23 143. The Transaction was approved at a price far-below the real value of
24 Broadcom. Broadcom's Board and senior management agreed to push through the
25 Acquisition at a sub-optimal price and thereby deprived the Company's public
26 shareholders of the true value of their shares for self-interested reasons unrelated to
27 the merits of the transaction. Moreover, the Transaction was approved on terms
28

1 that gave the public Class A shareholders less than the Class B shareholders. As
2 detailed above, the Board was primarily motivated in securing preferential
3 treatment for defendants Samueli and Nicholas by allowing them to at least defer,
4 and potentially avoid, paying taxes by exchanging all of their \$2.6 billion in
5 Broadcom holdings for Restricted Exchangeable Units in the newly-formed
6 company.

7 144. By exchanging their shares to Restricted Exchangeable Units, rather
8 than for cash or common shares, defendants Samueli and Nicholas are able to
9 secure tax-deferred treatment for their Broadcom shares, resulting in a current tax
10 savings of hundreds of millions of dollars. This deal structure enables Samueli and
11 Nicholas to defer their tax liability to a future date that would be more
12 advantageous to them (or to avoid ever paying capital gains tax by stepping up
13 their tax basis if the shares are not sold during their lifetimes).

14 145. Although Avago ultimately agreed to provide all holders of
15 Broadcom common stock the option of exchanging their shares for Restricted
16 Exchangeable Units, the reality is only a small percentage of stockholders (aside
17 from Samueli and Nicholas) are even able, let alone likely, to opt for the illiquid
18 Units, instead of cash or common shares. As stated in the S-4/A, the Special
19 Committee recognized that many stockholders would be unwilling or unable to
20 exchange their shares for Restricted Exchangeable Units because they are bound
21 by investment policies or other restrictions that prevent them from owning such
22 illiquid Units, which are subject to a strict holding period and cannot be traded on
23 the open market. Moreover, it would be impractical for most individual investors
24 to own the Restricted Exchangeable Units which are illiquid for up to two years.

25 146. Moreover, as reported in *The Wall Street Journal*, mutual funds,
26 which own about 25% of Broadcom's outstanding stock, are unlikely to elect
27
28

1 Restricted Exchangeable Units. See Liz Hoffman, *Avago's Pending Broadcom*
2 *Purchase Taps Arcane Tax Structure*, Wall St. J., May 28, 2015. Mutual funds,
3 which are evaluated by their pretax performance, have no incentive to minimize or
4 defer taxes. Moreover, most mutual funds and many other institutional investors
5 are not permitted to invest in securities that are not publicly traded. As of June 30,
6 2015, 86% of Broadcom's Class A shares were owned by institutional investors.
7 For this and other reasons, *The Wall Street Journal* reported, citing a source
8 familiar with the deal, that "Broadcom doesn't expect most of its investors would
9 choose to take the units" *Id.*

10 147. Accordingly, Broadcom's Board and management knew that most of
11 the Company's investors would not benefit from, and had little ability, incentive or
12 desire to exchange their liquid Broadcom stock for Restricted Exchangeable Units
13 as their merger consideration. Indeed, most investors would be forced to, or at least
14 prefer, to have liquid assets of cash or tradeable common shares. Clearly, the tax-
15 deferral structure of the Restricted Exchangeable Units, which was never part of
16 Avago's initial proposals, nor was it an initial condition demanded by Broadcom,
17 was negotiated for the benefit of defendants Samueli and Nicholas to entice them
18 to support the Acquisition, not for Broadcom's shareholders as a whole.

19 20 148. More problematic, in addition to providing substantial tax-deferral
21 benefits to Samueli and Nicholas, the Restricted Exchangeable Units that the
22 founders are set to receive are more valuable than the other forms of proposed
23 merger consideration. Evercore was retained ostensibly for the purpose of advising
24 the Special Committee on whether stockholders who choose not to receive
25 Restricted Exchangeable Units would receive consideration that was fair from a
26 financial perspective. Although Evercore opined that stockholders who choose not
27 to elect Restricted Exchangeable Units would receive fair consideration under the
28

1 Acquisition, Evercore’s financial analysis suggests otherwise, and does not take
2 into account whether it is fair relative to shareholders who do elect the Restricted
3 Exchangeable Units. Indeed, Evercore’s analysis indicates that those stockholders
4 who elect to receive Restricted Exchangeable Units (*i.e.*, Samueli and Nicholas)
5 will receive far more consideration in the future than non-electors (*i.e.*, those who
6 opt for cash or ordinary shares).

7 149. Specifically, for its analysis entitled “Allocation of Broadcom Merger
8 Consideration to Holders of Broadcom Common Shares that Do Not Elect to
9 Receive Restricted Exchangeable Units,” Evercore calculated the implied future
10 consideration for stockholders who choose to elect to receive Restricted
11 Exchangeable Units (“Unit electors”), as compared to those who choose not to
12 elect Units (“Non-electors”), based on a range of election scenarios whereby 0% to
13 100% of the Company’s stockholders elect to receive the Units. Evercore’s
14 analysis indicates that under each election scenario, Unit-electors will receive
15 significantly more implied future consideration than Non-electors, as set forth in
16 the following tables provided in the S-4/A, at 119-120.
17

**2016 Non-GAAP EPS Multiple of 13.5x/\$1,100mm of Synergies
% of Broadcom Shares Electing Restricted Exchangeable Units**

	<u>0%</u>	<u>8%</u>	<u>15%</u>	<u>25%</u>	<u>50%</u>	<u>75%</u>	<u>100%</u>
Estimated Pro Forma 2016E Non-GAAP EPS	\$12.87	\$12.87	\$12.87	\$12.87	\$12.87	\$11.82	\$10.81
Illustrative Hypothetical Holdco Share Price	\$173.18	\$173.18	\$173.18	\$173.18	\$173.18	\$159.15	\$145.50
Implied Broadcom Future Consideration							
Non-Electors	\$65.16	\$64.25	\$63.28	\$61.61	\$54.50	\$54.50	--
Unit-Electors	--	\$73.85	\$73.85	\$73.85	\$73.85	\$67.87	\$62.05

**2016 Non-GAAP EPS Multiple of 16.0x/\$1,100mm of Synergies
% of Broadcom Shares Electing Restricted Exchangeable Units**

	<u>0%</u>	<u>8%</u>	<u>15%</u>	<u>25%</u>	<u>50%</u>	<u>75%</u>	<u>100%</u>
Estimated Pro Forma 2016E Non-GAAP EPS	\$12.87	\$12.87	\$12.87	\$12.87	\$12.87	\$11.82	\$10.81
Illustrative Hypothetical Holdco Share Price	\$205.84	\$205.84	\$205.84	\$205.84	\$205.84	\$189.17	\$172.95
Implied Broadcom Future Consideration							
Non-Electors	\$72.31	\$70.79	\$69.17	\$66.37	\$54.50	\$54.50	--
Unit-Electors	--	\$87.78	\$87.78	\$87.78	\$87.78	\$80.67	\$73.75

**2016 Non-GAAP EPS Multiple of 13.5x/\$750mm of Synergies
% of Broadcom Shares Electing Restricted Exchangeable Units**

	<u>0%</u>	<u>8%</u>	<u>15%</u>	<u>25%</u>	<u>50%</u>	<u>75%</u>	<u>100%</u>
Estimated Pro Forma 2016E Non-GAAP EPS	\$12.11	\$12.11	\$12.11	\$12.11	\$12.11	\$11.17	\$10.23
Illustrative Hypothetical Holdco Share Price	\$162.95	\$162.95	\$162.95	\$162.95	\$162.95	\$150.30	\$137.70
Implied Broadcom Future Consideration							
Non-Electors	\$62.92	\$62.20	\$61.43	\$60.11	\$54.50	\$54.50	--
Unit-Electors	--	\$69.49	\$69.49	\$69.49	\$69.49	\$64.09	\$58.72

150. However, Evercore's analysis of the unfair premium being given to Unit Electors failed to further account for the fact that if any amount of Class A shareholders, such as Samuelli and Nicholas, also elect the Restricted Exchangeable Units, then the value of the ordinary shares elected by those shareholders that are "unable or unwilling" to elect the Restricted Exchangeable Units will be diminished even more.

1 151. As shown below, should Class A shareholders elect enough stock to
 2 invoke the 50/50 proration mechanism, their shares' value will be diminished by
 3 that proration whereas the value of the shares held by those shareholders electing
 4 the Restricted Exchangeable Units will not. Thus, as many as 10.51 million shares
 5 will be lost to proration and the Restricted Exchangeable Unit election.

Percent of Class A shares electing cash	Proration factor without Restricted Exchangeable Units	Proration factor due to Restricted Exchangeable Units	Class A shares to be prorated* (million)	Avago shares lost due to Restricted Exchangeable Units (million)
0%	50.00%	45.80%	572.0	10.51
5%	52.42%	48.21%	543.4	10.00
10%	55.08%	50.89%	514.8	9.44
15%	58.03%	53.89%	486.2	8.82
20%	61.31%	57.26%	457.6	8.13
25%	64.99%	61.07%	429.0	7.36
30%	69.13%	65.43%	400.4	6.49
35%	73.84%	70.47%	371.8	5.50
40%	79.24%	76.34%	343.2	4.36
45%	85.49%	83.28%	314.6	3.05
50%	92.81%	91.61%	286.0	1.51
54%	99.64%	99.57%	263.1	0.08
* Based on 620 million BRCM shares fully diluted per 9/30/15 10-Q.				

19 152. As a result, the existence of the non-prorated Restricted Exchangeable
 20 Units have caused and, once the election deadline passes, will damage the public
 21 shareholders of Broadcom regardless of how many elect the cash consideration.
 22 Plaintiffs and the proposed class have been damaged by Defendants' breaches.

23 **Defendants Structured the Deal to Provide Themselves with the Greatest**
 24 **Benefits**

25 153. In addition to securing the substantial tax benefits and financial value
 26 that would be unlocked upon converting his Broadcom holdings to Restricted
 27 Exchangeable Units, Defendant Samueli also secured another personal benefit for
 28

1 himself in the form of continuing employment in the newly-formed company.
 2 Under the Merger Agreement, Avago has agreed to designate Samueli and another,
 3 unnamed Broadcom director to the board of the new company.

4 154. The other Broadcom directors also stand to gain significant personal
 5 benefits for their efforts in securing the deal with Avago. Indeed, as the following
 6 table shows, the Individual Defendants, along with the company's senior
 7 management, will receive over a hundred million dollars in special payments
 8 which are not being made to ordinary stockholders – for their previously locked-up
 9 shares, through the immediate and full vesting of their stock options and restricted
 10 stock units, upon the close of the deal. The accelerated vesting of these holdings
 11 would not have occurred if Broadcom had remained a standalone company.

	Total Cash Payment With Respect to Vested Options		Total Cash Payment With Respect to RSUs		Total Cash Payment with Respect to Vested Options and RSUs
Non-Employee Directors	Shares	Value	Shares	Value	
Robert J. Finocchio, Jr.	--	--	5,219	\$ 289,562	\$ 289,562
Nancy H. Handel	10,000	\$142,322	5,219	\$ 289,562	\$ 431,884
Eddy W. Hartenstein	--	--	5,219	\$ 289,562	\$ 289,562
Maria Klawe, Ph.D.	--	--	5,219	\$ 289,562	\$ 289,562
John E. Major	20,000	\$369,844	5,219	\$ 289,562	\$ 659,406
William T. Morrow	--	--	5,219	\$ 289,562	\$ 289,562
Robert E Switz	--	--	5,219	\$ 289,562	\$ 289,562
Named Executive Officers	Shares	Value	Shares	Value	
Scott A. McGregor	835,000	\$23,428,597	1,183,315	\$62,652,933	\$ 89,081,530
Eric K. Brandt	--	--	452,412	\$25,100,818	\$ 25,100,818
Henry Samueli, Ph.D.	--	--	--	--	--
Daniel A. Marotta	--	--	392,573	\$21,780,818	\$ 21,780,818
Rajiv Ramaswami, Ph.D.	--	--	392,573	\$21,780,818	\$ 21,780,818

19 155. Moreover, certain members of the Board and management are set to
 20 receive millions in cash in the form of “change-of-control” payments, including
 21 Defendant McGregor and Defendant Brandt. All told, Broadcom’s directors and
 22 officers stand to gain over \$200 million in special insider benefits for themselves.
 23
 24
 25
 26
 27
 28

1 Defendant McGregor, Broadcom’s President, CEO and director, alone, stands to
2 receive more than \$98 million in special payments once the Transaction closes.

3 156. These personal benefits secured by the members of the Board were
4 key factors in the Individual Defendants’ decision to pursue the Acquisition with
5 Avago. Instead of attempting to negotiate an agreement reflecting the best
6 consideration reasonably available for the public shareholders they are duty-bound
7 to serve, the Individual Defendants disloyally placed their own interests first, and
8 tailored the terms and conditions of the Acquisition to meet their own needs and
9 objectives. The Board’s efforts to advance its members’ personal interests at the
10 expense of the Company’s public shareholders have resulted in the unfair
11 Acquisition being presented to the shareholders at an untenable and inadequate
12 price.
13

14 157. The Individual Defendants’ fiduciary duties require them to maximize
15 stockholder value when entering into a change-in-control transaction such as the
16 Acquisition. Here, however, the Individual Defendants’ eagerness to enter into an
17 acquisition with the Avago Defendants due to their conflicted status has resulted in
18 a sales process that was not designed to obtain the maximum price for Broadcom
19 stockholders. As a result, the Company’s public stockholders have been, and will
20 continue to be, denied the fair process and arm’s-length negotiated terms to which
21 they are entitled to in a sale of their Company.

22 158. The Consideration substantially undervalues Broadcom by failing to
23 account for, among other things, the Company’s recent financial performance,
24 robust future prospects, and the substantial synergies that will result from the
25 consummation of the Acquisition. Indeed, in the period leading up to the
26 Acquisition, Broadcom was achieving “double-digit percentage growth” in both
27 net revenue and operating margin for its largest and most important lines of
28

1 business, Broadband and Connectivity. During the Company's first quarter 2015
2 earnings call, defendant McGregor highlighted Broadcom's surging growth and
3 announced that the Company would continue its strong financial performance and
4 "deliver top-line growth along with operating margin leverage."

5 159. Numerous investment analysts took note of Broadcom's exceptional
6 growth prospects and valued the Company significantly higher than the
7 consideration of \$54.50 per share. Prior to the announcement of the Acquisition, at
8 least four analysts had set price targets as high as \$59.00-\$60.00 per share for the
9 Company, including the following: (a) B. Riley & Co. had a target price of \$60.00.
10 (b) Nomura had a target price of \$60.00. (c) J.P. Morgan had a target price of
11 \$59.00. (d) Brean Capital LLC had a target price of \$59.00.

12 160. In setting a \$59.00 price target for Broadcom, the analyst for J.P.
13 Morgan reported on May 4, 2015 that the Company was primed for sustained
14 growth and that its product and development pipeline was strong:

15 [W]e believe the company remains committed to its strategy
16 of driving stable growth (5-8% top-line growth, double digits
17 bottom line growth), aggressive cash return to shareholders (>60%
18 payout ratio) and driving free cash flow margins in the 25-30%
19 range. The company is armed with a solid pipeline of new products
20 (Tomahawk, StrataDNX, RSDB WiFi connectivity, 4K UHD),
21 share gain opportunities (Cisco), new customers (Xiaomi,
22 Ericsson), and expanding market opportunities (IoT and
23 automotive) that we believe are driving management's confidence
24 on profitable topline growth. Near-term, we believe a combination
25 of a strong pipeline, large exposure to growth segments (Apple
26 iPhone, Samsung GS6, China PON build-out, datacenter/enterprise
27 networking) and relatively small exposure to the PC, wireless
28 infrastructure, and 4G low-end smartphone market is driving
strength in Broadcom's business while other peers are seeing a
weaker fundamental demand profile. The company's development
pipeline is also strong – we believe the team is already deep into the
design phase of its next generation networking products (16nm
Trident III and Tomahawk II) and is working on building its IoT
platform/product portfolio that it will take to the broad markets via
a distribution strategy.

161. The consideration also fails to adequately compensate Broadcom
shareholders for the significant synergies that Avago will enjoy upon the

1 completion of the Acquisition. Avago is expected to reap cost synergies at a
2 conservative annual rate of \$750 million. However, Broadcom's management
3 projected that even greater synergistic value would be achievable, as high as \$1.1
4 billion annually. But under the Merger Agreement, the Company's public
5 stockholders are set to receive inadequate consideration that does not reflect the
6 value of the substantial post-combination synergies that will inure to Avago and its
7 stockholders, once the deal is completed.

8
9 162. Finally, to make matters worse, the Board failed to obtain a protective
10 collar on the stock portion of the consideration. A collar provision in the Merger
11 Agreement would protect Broadcom stockholders from a dwindling of the value of
12 the deal in the event of a decline in the market price of Avago common stock. J.P.
13 Morgan's fairness analysis depended on an Avago share price range of \$130.00 to
14 \$199.75. If Avago's shares are not at least above \$130.00, J.P. Morgan's analysis
15 suggests that the merger price is unfair to Broadcom shareholders. A collar would
16 prevent this from occurring by increasing the number of shares that Broadcom
17 stockholders would receive for their stock when Avago's share price declines.

18 163. Based on the foregoing, it is clear that the consideration provided
19 under the Merger Agreement does not reflect the true inherent value of the
20 Company, as known only to defendants at the time of the Acquisition.

21 **THE MATERIALLY FALSE AND/OR MISLEADING PROXY**
22 **STATEMENT**

23 164. In connection with the shareholder vote on the Acquisition,
24 Defendants filed and disseminated a materially false and/or misleading Final Joint
25 Proxy Statement on Form S-4/A, in contravention of §§14(a) and 20(a) of the 1934
26 Act, and/or defendants' duty of candor and full disclosure under state law. The S-
27 4/A which recommended that Broadcom shareholders vote in favor of the
28

1 Acquisition, misrepresented and failed to disclose material information necessary
2 for the Company's public stockholders to make an informed decision as to whether
3 to vote their shares in favor of the Acquisition of Broadcom by Avago.

4 165. The S-4/A represented to shareholders that "the Broadcom Merger
5 Consideration to be received by the holders of Broadcom Common Shares who
6 may choose not to elect to receive restricted exchangeable limited partnership units
7 is fair from a financial point of view to such holders of Broadcom Common
8 Shares." The S-4/A also stated that "[t]he Restricted Exchangeable Units are
9 designed to have distribution rights that are substantially equivalent to those of the
10 Holdco Ordinary Shares."

11 166. These statements are materially false and/or misleading because the
12 Restricted Exchangeable Units and Holdco Ordinary Shares that Broadcom
13 stockholders are set to receive under the Merger Agreement are not economically
14 or substantially "equivalent." Defendants knew that Restricted Exchangeable Units
15 and Holdco Ordinary Shares are not equivalent because Evercore concluded that
16 stockholders who choose to elect to receive Restricted Exchangeable Units will
17 receive substantially greater implied future consideration, at least a \$7 premium in
18 fact, than those who choose to elect to receive other forms of consideration,
19 including Holdco Ordinary Shares or cash and because the Restricted
20 Exchangeable Units are not currently taxable, while there is uncertainty as to the
21 taxability of Holdco Ordinary Shares.

22 167. The S-4/A also informed shareholders that "[t]he Broadcom board of
23 directors and the Special Committee have determined that the Merger
24 Agreement... and the other transactions contemplated by the Merger Agreement
25 are advisable and in the best interests of Broadcom and its shareholders." S-4/A, at
26 309. This statement is materially false and/or misleading because the Board and
27
28

1 Special Committee specifically negotiated and entered into the Merger Agreement
2 to secure merger consideration that would be tax-advantaged to defendants
3 Samueli and Nicholas, rather than to secure the maximum price for Broadcom's
4 public shareholders.

5 168. The S-4/A also represented that "the Broadcom Merger consideration
6 to be received by the holders of Broadcom Common Shares (other than any such
7 holders which are affiliates of Broadcom) who may choose not to elect to receive
8 Restricted Exchangeable Units is fair, from a financial point of view, to such
9 holders of Broadcom Common Shares." This statement is materially false and/or
10 misleading because the Restricted Exchangeable Units that Defendants secured for
11 the benefit for Samueli and Nicholas were more valuable than the other forms of
12 merger consideration, based on the facts that Evercore concluded that stockholders
13 who choose to elect to receive Restricted Exchangeable Units will receive
14 substantially greater implied future consideration than those who choose to elect to
15 receive other forms of consideration, including Holdco Ordinary Shares.
16

17 169. The S-4/A also materially omitted the fact that the value of the Holdco
18 ordinary shares to those shareholders who choose to elect stock will be materially
19 and substantially diminished by each shareholder, particularly Defendant Samueli,
20 Nicholas and any other Individual Defendant that elects to receive the Restricted
21 Exchangeable Units.

22 170. Shareholders were entitled to know whether the effects of the
23 Restricted Exchangeable Units on the value of Holdco ordinary shares. By
24 omitting this materially information, shareholders that are unwilling or unable to
25 elect the Restricted Exchangeable Shares are being actionably coerced to accept
26 less than their shares are worth just so that Nicholas and Samueli can received their
27 tax-free all stock consideration.
28

1 171. As a result of these material omissions and misstatements of the Joint
2 Proxy Statement and Merger Agreement, the vote by Broadcom shareholders to
3 approve the Acquisition was tainted.

4 **CLASS ACTION ALLEGATIONS**

5 172. Plaintiffs bring this action individually and as a class action pursuant
6 to Federal Rule of Civil Procedure 23 on behalf of all holders of Broadcom Class
7 A common stock that have been or will be damaged by the conduct described
8 herein (the "Class"). Excluded from the Class are defendants herein and any
9 person, firm, trust, corporation or other entity related to or affiliated with any of the
10 defendants.

11 173. This action is properly maintainable as a class action.

12 174. The Class is so numerous that joinder of all members is impracticable.
13 According to the S-4/A, as of September 14, 2015, there were more than 560.6
14 million shares of Broadcom common stock outstanding.

15 175. There are questions of law and fact that are common to the Class and
16 that predominate over questions affecting any individual Class member. The
17 common questions include, but are not limited to, the following:

18 a. Whether the Individual Defendants, other than defendant
19 Nicholas, have breached their fiduciary duties of loyalty, good faith, and/or due
20 care with respect to plaintiffs and the other members of the Class in connection
21 with the Acquisition;

22 b. Whether the Individual Defendants, other than defendant
23 Nicholas, breached their fiduciary duty to secure and obtain the best price
24 reasonably available under the circumstances for the benefit of plaintiffs and the
25 other members of the Class in connection with the Acquisition;

1 c. Whether the Defendants issued a materially false and
2 misleading S -4/Proxy Statement in connection with the Acquisition;

3 d. Whether the Acquisition is entirely fair to the Class;

4 e. Whether defendants, in bad faith and for improper motives,
5 impeded or erected barriers designed to discourage other potentially interested
6 parties from making an offer to acquire the Company or its assets; and

7 f. Whether defendant Nicholas and the Avago Defendants aided
8 and abetted any of the other defendants' breaches of fiduciary duties owed to
9 plaintiffs and the other members of the Class in connection with the Acquisition.

10 176. Plaintiffs' claims are typical of the claims of the other members of the
11 Class and plaintiffs do not have any interests adverse to the Class.

12 177. Plaintiffs have retained competent counsel experienced in litigation of
13 this nature and will fairly and adequately represent and protect the interests of the
14 Class.

15 178. The prosecution of separate actions by individual members of the
16 Class would create a risk of inconsistent or varying adjudications with respect to
17 individual members of the Class that would establish incompatible standards of
18 conduct for the party opposing the Class.

19 179. Plaintiffs anticipate that there will be no difficulty in the management
20 of this litigation. A class action is superior to other available methods for the fair
21 and efficient adjudication of this controversy.

22 180. Defendants have acted, or failed to act, on grounds generally
23 applicable to the Class with respect to the matters complained of herein, thereby
24 making appropriate the relief sought herein with respect to the Class as a whole.
25
26
27
28

COUNT I

Against All Defendants for Violations of §14(a) of the 1934 Act and SEC Rule 14a-9 Promulgated Thereunder

181. Plaintiffs repeat and reallege the allegations contained above as if fully set forth herein.

182. SEC Rule 14a-9, 17 C.F.R. §240.14a-9, promulgated pursuant to §14(a) of the 1934 Act, provides:

No solicitation subject to this regulation shall be made by means of any proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading.

183. Defendants prepared, reviewed and/or disseminated the false and misleading S-4/A which failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. As stated herein, the S-4/A misrepresented and/or omitted material facts, including material information about the unfair consideration offered in the Acquisition, the actual intrinsic value of the Company and the conflicts of interest that burdened the process.

184. The omissions and false and misleading statements made by defendants in the S-4/A constitute violations of §14(a) of the 1934 Act and SEC Rule 14a-9 promulgated thereunder, because such statements are materially false and/or misleading and were provided in at least a negligent manner. By virtue of their positions within the Company and/or roles in the process and in the preparation of the S-4/A, Defendants were aware of this information and of their duty to disclose this information in the S-4/A.

1 185. The omissions and false and misleading statements in the S-4/A are
2 material in that a reasonable shareholder would consider them important in
3 deciding how to vote on the Acquisition. In addition, a reasonable investor would
4 view a full and accurate disclosure as having significantly altered the “total mix” of
5 information made available in the S-4/A and in other information reasonably
6 available to shareholders.

7 186. By reason of the misconduct detailed herein, Defendants are liable
8 pursuant to §14(a) of the 1934 Act and SEC Rule 14a-9 promulgated thereunder.

9 **COUNT II**
10 **Against the Individual Defendants and the Avago Defendants for Violation of**
11 **§20(a) of the 1934 Act**

12 187. Plaintiffs repeat and reallege the allegations contained above as if
13 fully set forth herein.

14 188. The Individual Defendants acted as controlling persons of Broadcom
15 within the meaning of §20(a) of the 1934 Act.

16 a. By virtue of their positions as officers and/or directors and/or
17 controlling shareholders of Broadcom, and/or their participation in and/or
18 awareness of the Company’s operations and/or intimate knowledge of the false
19 statements contained in the S-4/A filed with the SEC, the Individual Defendants
20 had the power to influence and control and did influence and control, directly or
21 indirectly, the decision-making of the Company, including the content and
22 dissemination of the various statements which plaintiffs contend are false and
23 misleading.

24 b. Each of the Individual Defendants were provided with or had
25 unlimited access to copies of the S-4/A and other statements alleged by plaintiffs to
26 be misleading prior to and/or shortly after these statements were issued and had the
27 ability to prevent the issuance of the statements or cause the statements to be
28 corrected.

1 c. The S-4/A details the Individual Defendants' involvement in
2 negotiating, reviewing and approving the Acquisition and preparation of the S-4/A.

3 d. The S-4/A contained the recommendation or authorization of
4 each of the Individual Defendants to approve the Acquisition. They were thus
5 directly involved in the preparation and approval of this document.

6 e. By reason of such conduct, the Individual Defendants are liable
7 pursuant to §20(a) of the 1934 Act.

8 189. The Avago Defendants are controlling persons of Broadcom and the
9 Individual Defendants within the meaning of §20(a) of the 1934 Act. By reason of
10 its contractual obligations with Broadcom and the Individual Defendants, the
11 Avago Defendants possessed control over Broadcom and the Individual
12 Defendants.

13 a. Broadcom and the Individual Defendants were required by §6.1
14 of the Merger Agreement to refrain from changing the operation of the Company's
15 business or engaging in a variety of business activities without the express written
16 consent of the Avago Defendants.

17 b. Pursuant to §6.8 of the Merger Agreement, Broadcom and the
18 Avago Defendants were jointly responsible for the preparation of the S-4/A, and
19 the Avago Defendants were required to file the S-4/A with the SEC.

20 c. By reason of such conduct, the Avago Defendants are liable
21 pursuant to §20(a) of the 1934 Act.

22
23 **COUNT III**
24 **Claim for Breach of Fiduciary Duty Against the Individual Defendants**
(Except Defendant Nicholas)

25 190. Plaintiffs repeat and reallege all previous allegations as if set forth
26 fully herein. For purposes of this Count only, the term "Individual Defendants"
27 excludes Defendant Nicholas.

1 191. The Individual Defendants have violated the fiduciary duties of care,
2 loyalty and good faith owed to the public stockholders of Broadcom and have
3 acted to put their personal interests ahead of the interests of Broadcom
4 stockholders.

5 192. As alleged herein, the Individual Defendants, as directors and/or
6 officers of the Company, have breached their fiduciary duties, to the Company's
7 stockholders by failing to engage in an honest and fair sales process. The
8 Individual Defendants have violated their fiduciary duties by entering into the
9 Acquisition without regard to the fairness of the transaction to Broadcom's public
10 Class A shareholders. In agreeing to the Acquisition, these Individual Defendants
11 have also initiated a process to sell Broadcom that imposes heightened fiduciary
12 responsibilities on them and requires enhanced scrutiny by the Court. The
13 Individual Defendants owe fundamental fiduciary obligations to the Company's
14 shareholders to take all necessary and appropriate steps to maximize the value of
15 their shares in implementing such a transaction, including the responsibility to
16 conduct fair and active bidding procedures and to negotiate to obtain the best
17 possible price for the Company's public shareholders. For the reasons set forth
18 above, the Individual Defendants failed to maximize shareholder value.

19 193. By the acts, transactions, and course of conduct alleged herein,
20 Defendants, individually and acting as a part of a common plan, unfairly deprived
21 Plaintiffs and the Class of the true value of their Broadcom shares.

22 194. The Individual Defendants have violated their fiduciary duties by
23 entering Broadcom into the Acquisition without regard to the effect of the
24 Acquisition on Broadcom's stockholders.
25
26
27
28

1 195. As demonstrated by the allegations above, the Individual Defendants
2 failed to exercise the care required and breached their duty of loyalty owed to the
3 stockholders of Broadcom because, among other reasons:

4 a. They failed to take steps to maximize the value of Broadcom to
5 its public stockholders;

6 b. They failed to properly value Broadcom and its assets,
7 operations and future value; and

8 c. They ignored or did not protect against the numerous conflicts
9 of interests resulting from the Individual Defendants' own financial stakes in the
10 Acquisition.
11

12 196. Because the Individual Defendants dominate and control the business
13 and corporate affairs of Broadcom, and have access to private corporate
14 information concerning Broadcom's assets, business, and future prospects, there
15 exists an imbalance and disparity of knowledge and economic power between them
16 and the public stockholders of Broadcom that makes it inherently unfair for them
17 to pursue and recommend the Acquisition wherein they will reap disproportionate
18 benefits to the exclusion of maximizing stockholder value.

19 197. By reason of the foregoing acts, practices, and course of conduct, the
20 Individual Defendants have failed to exercise ordinary care and diligence in the
21 exercise of their fiduciary duties toward plaintiffs and the other members of the
22 Class.

23 198. The Individual Defendants are engaging in self-dealing, are not acting
24 in good faith toward plaintiffs and the other members of the Class, and have
25 breached and are breaching their fiduciary duties owed to the Class.

26 199. The Individual Defendants each have a fiduciary obligation to further
27 disclose all material information to Plaintiffs and the Class concerning the
28

1 Acquisition. The Individual Defendants failed to adequately discharge their
2 responsibility.

3 200. As a result of the Individual Defendants' breaches and unlawful
4 actions, Plaintiffs and the Class have been damaged in that they will not receive
5 fair and adequate consideration for their Broadcom stock.

6 **COUNT IV**
7 **Claim for Aiding and Abetting Breaches of Fiduciary Duty Against**
8 **Defendants Nicholas and the Avago Defendants**

9 201. Plaintiffs repeat and reallege all previous allegations as if set forth
10 fully herein. For purposes of this Count only, the term "Individual Defendants"
11 excludes Defendant Nicholas.

12 202. As alleged herein, defendant Nicholas and the Avago Defendants
13 knew that the Individual Defendants were breaching their fiduciary duties to the
14 Company's public shareholders and substantially assisted the Individual
15 Defendants by creating the Restricted Exchangeable Unit consideration scheme as
16 discussed herein.

17 203. Defendant Nicholas and the Avago Defendants also knowingly and
18 substantially assisted the Individual Defendants' breaches of fiduciary duties in
19 connection with the Acquisition, which, without such aid, would not have
20 occurred. In connection with discussions regarding the Acquisition, Nicholas and
21 the Avago Defendants obtained sensitive, non-public information concerning
22 Broadcom and thus had unfair advantages that are enabling the Avago Defendants
23 to acquire the Company at an unfair and inadequate price.

24 204. As a result, Plaintiffs and Class members have been damaged in that
25 they will not receive fair and adequate consideration for their Broadcom stock and
26 in a form that is unfair to the Class A public shareholders.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs prays for relief and judgment in favor of the Class,
3 as follows:

4 A. Declaring that this action is properly maintainable as a class action;

5 B. Awarding Plaintiffs and the Class damages in an amount to be determined
6 at trial;

7 C. Awarding Plaintiffs the costs and disbursements of this action, including
8 reasonable attorneys' and experts' fees; and

9 D. Granting such other and further equitable relief as this Court may deem
10 just and proper.

11
12 DATED: January 15, 2016

12 Respectfully submitted,

13
14 **COHEN MILSTEIN SELLERS & TOLL**
15 **PLLC**

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