

1 DEWEY & LEBOEUF LLP  
Barbara A. Caulfield (SBN 108999)  
2 E-mail: bcaulfield@dl.com  
3 Peter E. Root (SBN 142348)  
E-mail: proot@dl.com  
4 1950 University Avenue, Suite 500  
East Palo Alto, California 94303  
5 Telephone: (650) 845-7000  
6 Facsimile: (650) 845-7333

7 DEWEY & LEBOEUF LLP  
1101 New York Avenue, N.W., Suite 1100  
8 Washington, DC 20005  
Telephone: (202) 346-8000  
9 Facsimile: (202) 346-8102

10 DEWEY & LEBOEUF LLP  
11 1301 Avenue of the Americas  
New York, New York 10019  
12 Telephone: (212) 259-8000  
13 Facsimile: (212) 259-6333

14 Attorneys for Plaintiff  
BROCADE COMMUNICATIONS SYSTEMS, INC.

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

18  
19 IN RE BROCADE COMMUNICATIONS )  
SYSTEMS, INC. DERIVATIVE LITIGATION )  
20 )  
21 This Documents Relates to: )  
22 ALL ACTIONS )  
23 )  
24 )  
25 )  
26 )

Case No. C 05-02233 CRB  
**STIPULATION AND ORDER  
SCHEDULING ORDER**  
  
Courtroom: 8, 19<sup>th</sup> Floor  
The Honorable Charles R. Breyer

1 Plaintiff Brocade Communications Systems, Inc. (“Brocade”) and defendants Gregory L.  
2 Reyes, Antonio Canova, Neal Dempsey, Seth D. Neiman, and Robert D. Bossi (collectively, with  
3 Brocade, the “Parties”) hereby submit this Stipulation and [Proposed] Scheduling Order.

4 **RECITALS**

5 Whereas, this action began as a shareholder derivative action on behalf of Brocade against  
6 certain former officers and directors of Brocade;

7 Whereas, pursuant to the Court’s Order dated June 18, 2008, Brocade (by the through the  
8 Special Litigation Committee of Brocade’s Board of Directors) filed a Second Amended Complaint  
9 (“SAC”) on August 1, 2008;

10 Whereas, on August 27, 2008, the Court entered an Order realigning the parties, with  
11 Brocade re-designated as the sole party-plaintiff and substituted for the shareholder plaintiffs;

12 Whereas, the SAC asserted claims against four defendants (Reyes, Canova, Dempsey, and  
13 Neiman) who were originally named as defendants in the underlying derivative action, and against  
14 six defendants (Paul R. Bonderson, Jr., Robert Bossi, Michael Byrd, Jack Cuthbert, Stephanie  
15 Jensen, and Mark Leslie) who were not previously part of the derivative action in this Court;

16 Whereas, on October 6, 2008, each of the ten defendants filed a motion to dismiss the SAC;

17 Whereas, the Court entered a Memorandum Order On Motions To Dismiss on December 12,  
18 2008, in which the Court granted in part and denied in part the defendants’ motions to dismiss, and  
19 entered a further Order On Motions To Dismiss on January 6, 2009 setting forth the reasons for the  
20 Court’s decision (together, the “Orders On Motion To Dismiss”);

21 Whereas, as set forth in its Orders On Motions To Dismiss, the Court dismissed all claims  
22 against defendants Bonderson, Byrd, Cuthbert, Jensen, and Leslie (each of whom remains a  
23 defendant in the parallel action pending in the Santa Clara Superior Court), and certain of the claims  
24 asserted against defendants Reyes, Canova, Dempsey, Neiman, and Bossi;

25 Whereas, in its Orders On Motions To Dismiss, the Court ruled that Brocade’s tenth cause of  
26 action for contribution – which was asserted against Reyes, Canova, Byrd, Dempsey, Leslie, and  
27 Neiman – is dismissed without prejudice because it is not yet ripe for determination.

28

1           Whereas, in its Orders On Motions To Dismiss, the Court ruled that Brocade may proceed on  
2 the following claims against the identified defendants: the fifth, sixth, seventh, eighth, and eleventh  
3 causes of action alleging various breaches of fiduciary duty and unjust enrichment against Reyes and  
4 Canova; the fifth, seventh, and eighth causes of action alleging various breaches of fiduciary duty  
5 against Dempsey and Neiman; and the thirteenth cause of action for aiding and abetting a breach of  
6 fiduciary duty against Bossi;

7           Whereas, discovery in this action had been stayed pursuant to the provisions of the Private  
8 Securities Litigation Reform Act of 1995 providing for an automatic stay of discovery during the  
9 pendency of any motion to dismiss;

10           Whereas, in its Order dated September 18, 2008, the Court set a trial date of June 15, 2009,  
11 and set June 4, 2009 for the pretrial conference, and June 11, 2009 for jury selection.

12           Whereas, the Parties participated in a meet-and-confer conference on October 7, 2008 (in  
13 which the now-dismissed defendants also participated), and in further conferences on January 6 and  
14 7, 2009 pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, to discuss a discovery plan  
15 and pretrial schedule;

16           Now, therefore, the Parties, through their undersigned counsel, stipulate and agree, subject to  
17 approval by the Court, as follows:

18 **I. JOINTLY PROPOSED PRETRIAL SCHEDULE**

19 **A. FACT DISCOVERY**

20 **1. Initial Disclosures**

21 Initial disclosures required by Fed. R. Civ. P. 26(a)(1) shall be completed by January 20,  
22 2009.

23 **2. Response to Previously Served Document Requests**

24 At the meet-and-confer conference on October 7, 2008, Brocade invited the defendants to  
25 serve requests for production of documents on Brocade, notwithstanding the stay on discovery then  
26 in effect. Defendants Reyes and Bossi each served document requests on Brocade on October 21,  
27 2008, and November 17, 2008, respectively. Brocade shall provide a written response to these  
28

1 documents requests, and shall substantially complete its production of documents responsive to  
2 those parts of the requests to which Brocade does not object, by January 12, 2009.

3 **3. Written Discovery**

4 All requests for production of documents, interrogatories, and requests for admission must be  
5 served by March 1, 2009, so that all written discovery is completed by the fact discovery final  
6 deadline of March 31, 2009.

7 **4. Fact Depositions**

8 (a) Deadline: All depositions, other than expert depositions, must be  
9 completed by March 31, 2009.

10 (b) Identification of Deponents and Deposition Scheduling: On or before  
11 January 23, 2009, the Parties shall meet-and-confer to discuss the scheduling of depositions of fact  
12 witnesses, including depositions that may already have been noticed (or a subpoena issued). Each  
13 Party shall make a good faith effort to identify the individuals or organizations that it or he expects  
14 to depose, with the understanding that this good faith exchange of information is not intended to be  
15 binding on any Party, and no Party shall be precluded from taking the deposition of a subsequently  
16 identified individual or organization. At this meet-and-confer and continuing thereafter, the Parties  
17 shall make every attempt to reach a mutually acceptable deposition schedule for factual witnesses  
18 with the understanding that it may be necessary to double-track or even triple track depositions in  
19 order to meet the schedule set out in this Order.

20 (c) Number of Depositions Allowed:

21 Excluding expert witness depositions, Brocade shall take no more than twenty-five  
22 (25) depositions, and the defendants (as a group) shall take no more than twenty-five (25)  
23 depositions. As provided in Fed. R. Civ. P. 30(d)(1), unless otherwise stipulated or ordered by the  
24 Court, each deposition shall be limited to one (1) day of seven (7) hours.

25 **5. Fact Discovery Final Deadline**

26 All discovery, other than expert discovery, must be completed by March 31, 2009.  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**B. EXPERT DISCOVERY**

**1. Expert Designations and Reports**

(a) The Party with the burden of proof on an issue shall designate any experts on that issue, disclose the information contemplated by Fed. R. Civ. P. 26(a)(2), and serve opening expert reports by March 2, 2009.

(b) Each Party shall identify experts in rebuttal to testimony referred to in paragraph I.B.1(a) above, and serve expert rebuttal reports, if required, pursuant to Fed. R. Civ. P. 26(a)(2) by March 30, 2009.

**2. Expert Depositions**

All depositions of all Parties' designated experts must be completed by April 10, 2009.

**C. DISPOSITIVE MOTIONS**

1. Dispositive motions, such as motions for summary judgment or partial summary judgment, must be filed by April 13, 2009.

2. Oppositions to dispositive motions must be filed by May 4, 2009.

3. Replies in support of dispositive motions must be filed by May 14, 2009.

4. All dispositive motions shall be heard on May 28, 2009.

**D. Pre-Trial Conference And Interim Deadlines**

1. Identification of Trial Witnesses:

(a) Witnesses for Case-In-Chief:

Each Party must serve on the other Parties a list identifying all fact witnesses that the Party expects to present at trial by April 10, 2009.

(b) Rebuttal Witnesses:

Each Party must serve on the other Parties a list identifying all fact witnesses that the Party expects to call at trial, or may call if the need arises, in rebuttal to witnesses identified pursuant to paragraph I.D.1(a) above by April 17, 2009.

4. Identification of Trial Exhibits:

1 (a) Exhibits for Case-in-Chief: Each Party must serve on the other Parties  
2 a list identifying each document or other exhibit that the Party expects to offer at trial, other than  
3 solely for purposes of impeachment, by May 8, 2009.

4 (b) Exhibits for Rebuttal: Each Party must serve on the other Parties a  
5 counter-list identifying each document or other exhibit that the Party expects to offer at trial, other  
6 than solely for purposes of impeachment, in response to the documents or other exhibits identified  
7 pursuant to paragraph I.D.4(a) above by May 13, 2009.

8 5. Motions in limine:

9 (a) Motions: *Motions in limine* that any Party intends to make must be  
10 served on the other Parties by May 15, 2009, in accordance with the Court's Guidelines For Trial  
11 And Final Pretrial Conference In Civil Jury Cases that was filed by the Court in this action on  
12 September 18, 2008 (the "Court's Guidelines").

13 (b) Oppositions: Oppositions to motions *in limine* must be served on the other  
14 Parties by May 26, 2008, in accordance with the Court's Guidelines.

15 (c) Filing of Collated Motions/Oppositions: *Motions in limine*, together with the  
16 any opposition thereto, must be filed by the moving Party by May 28, 2009, in accordance with the  
17 Court's Guidelines.

18 6. Pretrial Briefs: In accordance with the Court's Guidelines, pretrial briefs are  
19 optional but, if filed, must be filed by May 28, 2009.

20 10. Proposed Final Pretrial Order: The Parties shall file a joint proposed final  
21 pretrial order on May 28, 2009, in accordance with the Court's Guidelines.

22 11. Jury Instructions/Voir Dire: The Parties shall file proposed jury instructions  
23 and proposed voir dire by May 28, 2009, in accordance with the Court's Guidelines.

24 12. Pretrial Conference: The pretrial conference shall be held on June 4, 2009, at  
25 2:30 p.m., as previously set by the Court.

26 13. Jury Selection: Jury selection shall commence on June 09, 2009, at 8:30 a.m..  
27  
28

1           **E.      Trial Date**

2           1.      The trial shall commence on June 15, 2009, at 8:30 a.m., as previously set by  
3 the Court.

4           2.      Post-trial submissions, if any, shall be due thirty (30) calendar days from the  
5 last day of trial.

6           **F.      Summary Of Pretrial Schedule And Trial Date**

7           **Fact Discovery**

8	Brocade's Response to Previous Document Requests	January 12, 2009
9	Initial Disclosures	January 20, 2009
10	Meet-and-Confer Re: Deposition Scheduling	January 23, 2009
11	Fact Discovery Final Deadline	March 31, 2009

12          **Expert Discovery**

13	Designations of Experts/Reports of Party with Burden	March 2, 2009
14	Designations of Rebuttal Experts/Reports	March 30, 2009
15	Deadline for Complete of Expert Depositions	April 10, 2009

17          **Trial Witnesses (Fact Witnesses)**

18	Identification of Trial Witnesses	April 10, 2009
19	Identification of Rebuttal Trial Witnesses	April 17, 2009

20          **Dispositive Motions**

21	Deadline for Filing Dispositive Motions	April 13, 2009
22	Oppositions	May 4, 2009
23	Replies	May 14, 2009
24	Hearing Date	May 28, 2009

25          **Pretrial Procedures**

26	Designation of Trial Exhibits	May 8, 2009
27	Counter-Designation of Trial Exhibits	May 13, 2009

28

1	Motions <i>in Limine</i>	May 15, 2009
2	Oppositions to Motions <i>in Limine</i>	May 26, 2009
3	Filing of paired sets of Motions <i>in Limine</i> /Oppositions	May 28, 2009
4	Filing of Joint Proposed Final Pretrial Order	May 28, 2009
5	Filing of Proposed Jury Instructions/Voir Dire	May 28, 2009
6	Pretrial Briefs	May 28, 2009
7	Pretrial Conference	June 4, 2009
8	Jury Selection	June 9, 2009

9

10 **Trial and Post-Trial Submissions**

11	Trial Date	June 15, 2009
12	Post-Trial Submissions	30 days after trial

13

14 Dated: January 15, 2009

DEWEY & LeBOEUF LLP

15

16 /s/ Peter E. Root  
Peter E. Root

17

18 Attorneys For Plaintiff  
BROCADE COMMUNICATIONS  
SYSTEMS, INC.

19

20 Dated: January 15, 2009

HOGAN & HARTSON LLP

21

22 /s/ Norman Blears  
Norman Blears

23

24 Attorneys For Defendant Antonio Canova

25 Dated: January 15, 2009

26 WILMER CUTLER PICKERING HALE &  
DORR



DEWEY & LeBOEUF LLP  
1950 University Avenue, Suite 500  
East Palo Alto, CA 94303-2225

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

/s/ Jonathan A. Shapiro  
Jonathan A. Shapiro

Attorneys For Defendant Seth D. Neiman

Dated: January 15, 2009

K&L GATES LLP

/s/ Jeffrey L. Bornstein  
Jeffrey L. Bornstein

Attorneys For Defendant Neal Dempsey  
SKADDEN, ARPS, SLATE, MEAGHER &  
FLOM LLP

Dated: January 15, 2009

/s/ Garrett J. Waltzer  
Garrett J. Waltzer

Attorneys For Defendant  
Gregory L. Reyes

Dated: January 15, 2009

ORRICK, HERRINGTON & SUTCLIFFE  
LLP

/s/ Michael D. Torpey  
Michael D. Torpey

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**ATTESTATION PURSUANT TO GENERAL ORDER 45**

I, Peter E. Root, am the ECF User whose ID and password are being used to file this Joint Case Management Conference Statement. In compliance with General Order 45.X.B., I hereby attest that concurrence in the filing of this document has been obtained from each of the other signatories. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 15th day of January, 2009, at East Palo Alto, California.

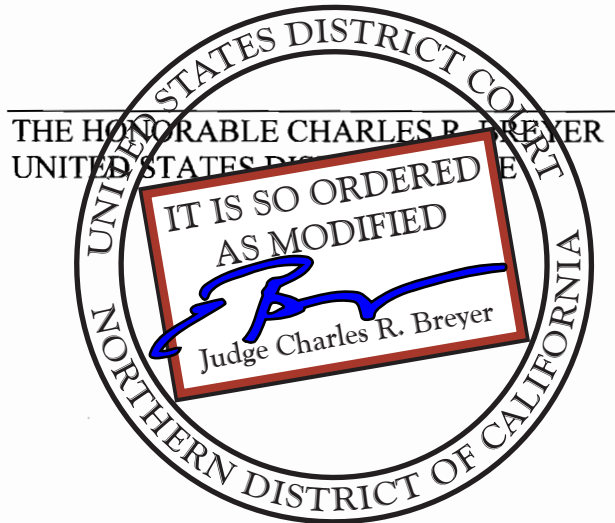
/s/ Peter E. Root  
\_\_\_\_\_  
Peter E. Root

**ORDER**

Upon Stipulation of the Parties as modified by the Court and good cause appearing therefor,

**IT IS SO ORDERED.**

Dated: January 16, 2009



**DEWEY & LeBOEUF LLP**  
1950 University Avenue, Suite 500  
East Palo Alto, CA 94303-2225