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11 *Attorneys for Plaintiff Brocade*  
12 *Communications Systems, Inc.*

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

17 **IN RE BROCADE COMMUNICATIONS**  
18 **SYSTEMS, INC. DERIVATIVE**  
19 **LITIGATION**

20 **This Document Relates to:**

21 **ALL ACTIONS**

Case No. C 05-02233 CRB

**[PROPOSED] ORDER APPROVING  
SETTLEMENT AND ENTRY OF  
COMPLETE BAR ORDER AS TO  
DEFENDANT SETH D. NEIMAN**

Date: July 24, 2009  
Time: 10:00 a.m.  
Dept: 8, 19<sup>th</sup> Floor  
Judge: Hon. Charles R. Breyer

1 Plaintiff Brocade Communications Systems, Inc.'s ("Brocade") Notice of Motion and  
2 Motion for Approval of Settlement and Entry of Complete Bar Order as to Defendant Seth D.  
3 Neiman ("Neiman"), dated June 25, 2009 (the "Motion"), having been presented to the Court;  
4 and,

5 IT APPEARING TO THE SATISFACTION OF THE COURT THAT:

6 1. Copies of the following documents were served on the other parties to this action  
7 and their counsel of record:

8 a. the Motion;

9 b. the Declaration of Peter E. Root in support of the Motion, which attached  
10 the May 18, 2009 settlement agreement between Brocade and Neiman (the  
11 "Settlement Agreement");

12 c. the Declaration of the Special Litigation Committee Members in support of  
13 this Motion; and

14 d. this [Proposed] Order;

15 2. Any timely objections to the settlement have been heard and considered;

16 3. The Settlement Agreement provides that Mr. Neiman will contribute \$450,000 to  
17 his attorneys to be applied as a credit to reduce the legal fees and expenses that Brocade otherwise  
18 might be obligated to pay on Neiman's behalf;

19 4. Upon entry of this Order, Brocade and Neiman will file a joint stipulation and  
20 proposed order for dismissal with prejudice of Brocade's remaining claims against Neiman, and  
21 Neiman's counterclaims against Brocade, in this Action. Brocade also shall dismiss all claims  
22 with prejudice against Neiman in the arbitration to which this Court previously referred this  
23 matter, and shall move the Superior Court at an appropriate time for an order dismissing with  
24 prejudice the claims against Neiman in the State Derivative Action, captioned *In re Brocade*  
25 *Communications Systems, Inc. Derivative Litigation*, Case No. 1:05-CV-041683 (Komar, J.);

26 5. The Settlement Agreement provides for "a judgment credit equal to the Neiman  
27 Releasees' pro rata share of the judgment against such person or entity, pursuant to the terms of  
28 Delaware law; provided further that, if a court should determine that the amount of the judgment-

1 reduction credit should be prescribed in whole or in part by federal law or by California law, the  
2 amount of the judgment-reduction credit shall be equal to (i) the amount specified in 15 U.S.C.  
3 § 78u-4(f)(7)(B), to the extent federal law applies, or (ii) the amount of the fee credit provided for  
4 in paragraph 1(b) [of the Settlement Agreement] to the extent California law applies”; and

5 6. No confidentiality clause of any kind is contained in the Settlement Agreement;

6 NOW, THEREFORE, IT IS DETERMINED AND ORDERED THAT:

7 The Settlement Agreement between Brocade, by and through the Special Litigation  
8 Committee of its Board of Directors, and Neiman, is hereby approved.

9 A Complete Bar Order consistent with the Settlement Agreement is hereby entered in  
10 favor of Neiman as follows, with the terms “Parties,” “Consolidated Federal Derivative Action,”  
11 “State Derivative Action,” “Barbour Action,” “Released Claim,” “Options Matters,” “Neiman  
12 Releasees,” and “Effective Date” having the meaning and scope ascribed to them in the  
13 Settlement Agreement:

14 (a) Any and all persons and entities, including, without limitation, the other  
15 defendants in the Consolidated Federal Derivative Action, the State Derivative Action, and the  
16 Barbour Action (collectively, the “Other Defendants”), are permanently barred, enjoined, and  
17 restrained from commencing, prosecuting, or asserting any claim against any Neiman Releasee  
18 arising under any federal, state, or foreign statutory or common-law rule, however styled, whether  
19 for indemnity or contribution or however denominated, where the claim is or arises out of a  
20 Released Claim or out of the Options Matters and the alleged injury to such person or entity arises  
21 from that person’s or entity’s or any other person’s or entity’s alleged liability to Brocade,  
22 including, without limitation, any claim in which a person or entity seeks to recover from any of  
23 the Neiman Releasees (i) any amounts such person or entity has or might become liable to pay to  
24 Brocade and/or (ii) any costs, expenses, or attorneys’ fees from defending any claim by Brocade.  
25 All such claims are hereby extinguished, discharged, satisfied, and unenforceable, subject to a  
26 hearing to be held by the Court, if necessary. The provisions of this subparagraph (a) are  
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1 intended to preclude any liability of any of the Neiman Releasees to any person or entity  
2 (including any Other Defendant) for indemnity or contribution, however denominated, on any  
3 claim that is or arises out of a Released Claim or out of the Options Matters and where the alleged  
4 injury to such person or entity arises from that person's or entity's or any other person's or  
5 entity's alleged liability to Brocade; *provided, however*, that if Brocade obtains any judgment  
6 against any such person or entity based upon, arising out of, or relating to a Released Claim or the  
7 Options Matters for which such person or entity and any of the Neiman Releasees are found to be  
8 jointly liable, that person or entity shall be entitled to a judgment credit equal to the Neiman  
9 Releasees' pro rata share of the judgment against such person or entity, pursuant to the terms of  
10 Delaware law; *provided further* that, if a court should determine that the amount of the judgment-  
11 reduction credit should be prescribed in whole or in part by federal law or by California law, the  
12 amount of the judgment-reduction credit shall be equal to (i) the amount specified in 15 U.S.C.  
13 § 78u-4(f)(7)(B), to the extent federal law applies, or (ii) the amount of the fee credit provided for  
14 in paragraph 1(b) of the Settlement Agreement to the extent California law applies. The  
15 provisions of this subparagraph shall not apply to any claim by a Neiman Releasee against  
16 another Neiman Releasee; any such claims shall be covered by the following subparagraph (b).

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19 (b) Each and every Neiman Releasee is permanently barred, enjoined, and  
20 restrained from commencing, prosecuting, or asserting any claim against any other person or  
21 entity (including, without limitation, any Other Defendant) arising under any federal, state, or  
22 foreign statutory or common-law rule, however styled, whether for indemnity or contribution or  
23 however denominated, where the claim is or arises from a Released Claim and the alleged injury  
24 to such Neiman Releasee arises from that Releasee's or any other person's or entity's alleged  
25 liability to Brocade, including, without limitation, any claim in which any Neiman Releasee seeks  
26 to recover from any person or entity, including another Neiman Releasee or any Other Defendant,  
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1 (i) any amounts any such Neiman Releasee has or might become liable to pay to Brocade and/or  
2 (ii) any costs, expenses, or attorneys' fees from defending any claim by Brocade. All such claims  
3 are hereby extinguished, discharged, satisfied, and unenforceable; *provided, however*, that  
4 nothing in this subparagraph (b) is intended to apply to Neiman's entitlement to fees and expenses  
5 as provided in paragraphs 1, 2, and 3 of the Settlement Agreement.  
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7 (c) Notwithstanding anything stated in the Complete Bar Order, if any person  
8 or entity (for purposes of this subparagraph (c), a "Petitioner") commences against any of the  
9 Neiman Releasees any claim or action either (i) asserting a claim that is or arises from a Released  
10 Claim or the Options Matters and where the alleged injury to such person or entity arises from  
11 that person's or entity's or any other person's or entity's alleged liability to Brocade or  
12 (ii) seeking contribution or indemnity for any liability or expenses incurred in connection with  
13 any such claim, and if such action or claim is not barred by a court pursuant to this subparagraph  
14 or is otherwise not barred by the Complete Bar Order, neither this Complete Bar Order nor the  
15 Settlement Agreement shall bar claims by that Neiman Releasee against (a) such Petitioner,  
16 (b) any person or entity who is or was controlled by, controlling, or under common control with  
17 the Petitioner, whose assets or estate are or were controlled, represented, or administered by the  
18 Petitioner, or as to whose claims the Petitioner has succeeded, and (c) any person or entity that  
19 participated with any of the preceding persons or entities described in items (a) and (b) of this  
20 subparagraph (c) in connection with the assertion of the claim brought against the Neiman  
21 Releasee(s); *provided, however*, that the Settlement Agreement and this Complete Bar Order shall  
22 not bar or enjoin Brocade from bringing any and all claims against any non-Neiman Releasee;  
23 *provided, further*, that nothing in this Complete Bar Order or the Settlement Agreement shall  
24 prevent the Parties from taking such steps as are necessary to enforce the terms of the Settlement  
25 Agreement.  
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(d) If any term of the Complete Bar Order entered by the Court is held to be unenforceable after the date of entry, such provision shall be substituted with such other provision as may be necessary to afford all of the Neiman Releasees the fullest protection permitted by law from any claim that is based upon, arises out of, or relates to any Released Claim.

Dated: July 16, 2009

