

1 David E. Bower  
**MONTEVERDE & ASSOCIATES PC**  
 2 600 Corporate Pointe, Suite 1170  
 Culver City, CA 90230  
 3 Tel: (213) 446-6652  
 4 Fax: (212) 601-2610  
 5 Counsel for Plaintiff

6 **UNITED STATES DISTRICT COURT**  
 7 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

8 MEL GROSS, Individually and on Behalf of  
 9 All Others Similarly Situated,

Civil Action No. 5:16-cv-07173-EMC

10 Plaintiff,

11 v.

12 BROCADE COMMUNICATIONS  
 SYSTEMS, INC., LLOYD A. CARNEY,  
 13 JUDY BRUNER, RENATO A.  
 DIPENTIMA, ALAN L. EARHART, JOHN  
 14 W. GERDELMAN, KIM C. GOODMAN,  
 DAVID L. HOUSE, L. WILLIAM  
 15 KRAUSE, DAVID E. ROBERSON, and  
 SANJAY VASWANI,

16 Defendants.  
 17  
 18

19 **STIPULATION AND ~~PROPOSED~~ ORDER CONCERNING PLAINTIFF'S**  
 20 **VOLUNTARY DISMISSAL OF THE ABOVE ACTION WITHOUT PREJUDICE AND**  
 21 **PLAINTIFF'S COUNSEL'S ANTICIPATED APPLICATION FOR AN AWARD OF**  
 22 **ATTORNEYS' FEES AND EXPENSES**

23 WHEREAS, on November 2, 2016, Brocade Communications Systems, Inc. ("Brocade"  
 24 or the "Company") announced that it had entered into a definitive merger agreement (the  
 25 "Merger Agreement"), pursuant to which a wholly owned subsidiary of Broadcom will merge  
 26 with and into Brocade (the "Proposed Transaction");  
 27  
 28

---

**STIPULATION TO DISMISS**

1           WHEREAS, on December 6, 2016, Brocade filed a preliminary proxy statement (the  
2 “Preliminary Proxy”) with the Securities and Exchange Commission (“SEC”) in support of the  
3 Proposed Transaction;

4           WHEREAS, on December 14, 2016, Plaintiff Melvin Gross (“Plaintiff”), a shareholder of  
5 Brocade, filed a Class Action Complaint in the above captioned action (the “Action”) alleging  
6 Defendants violated Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 and Rule  
7 14a-9 promulgated thereunder (the "Exchange Act") by causing the allegedly materially  
8 incomplete and misleading Proxy to be filed;

9           WHEREAS, on December 20, 2016, Brocade filed a definitive proxy statement (the  
10 “Definitive Proxy”) with the SEC setting a shareholder meeting on January 26, 2017;

11           WHEREAS, on December 23, 2016, Plaintiff sent a formal demand letter to Defendants  
12 stating that the Definitive Proxy had failed to address his alleged disclosure violations and  
13 providing legal authority in support of the alleged disclosure violations in his Class Action  
14 Complaint;

15           WHEREAS, on January 18, 2017, Brocade filed an amended proxy containing  
16 supplemental disclosures addressing certain disclosure allegations in the Action (the  
17 “Supplemental Disclosures”);

18           WHEREAS, Plaintiff contends that the prosecution of the Action was a cause of the  
19 decision to make the Supplemental Disclosures, and Defendants dispute that contention;

20           WHEREAS, the Supplemental Disclosures moot the disclosure claims asserted in the  
21 Action;

22           NOW THEREFORE, pursuant to the stipulations of the parties, **IT IS HEREBY**  
23 **ORDERED AND ADJUDGED THAT:**

- 1           1.     Plaintiff hereby agrees to voluntarily dismiss the Action, without prejudice  
2           to Plaintiff;
- 3           3.     Plaintiff contends that the Supplemental Disclosures were issued by  
4           Defendants in response to this Action and the efforts of Plaintiff's counsel  
5           to prosecute disclosure claims, and Plaintiff therefore asserts that his  
6           counsel is entitled to a fee and expense award;
- 7           4.     Defendants dispute Plaintiff's contention and deny that Plaintiff's counsel  
8           are entitled to a fee and expense award; and
- 9           5.     This Court retains continuing jurisdiction over the parties in the Action  
10          solely for purposes of further proceedings related to the adjudication of  
11          Plaintiff's anticipated application for an award of attorneys' fees and  
12          expenses.  
13

14  
15  
16 DATED: February 6, 2017

Respectfully submitted,  
  
By: /s/ David E. Bower  
David E. Bower SBN 119546  
**MONTEVERDE & ASSOCIATES PC**  
600 Corporate Pointe, Suite 1170  
Culver City, CA 90230  
Tel: (310) 446-6652  
Fax: (212) 601-2610  
Email: dbower@monteverdelaw.com

17  
18  
19  
20 **OF COUNSEL**

21 **MONTEVERDE & ASSOCIATES PC**  
Juan E. Monteverde  
22 The Empire State Building  
23 350 Fifth Avenue, 59<sup>th</sup> Floor  
New York, NY 10118  
24 Tel: (212) 971-1341  
E-mail: jmonteverde@monteverdelaw.com  
25  
26  
27  
28

Counsel for Plaintiff

1 **GAINNEY McKENNA & EGLESTON**

2 Thomas J. McKenna  
3 Gregory M. Egleston  
4 440 Park Avenue South, 5th Floor  
5 New York, NY 10016  
6 Telephone: (212) 983-1300  
7 Facsimile: (212) 983-0383  
8 Email: tjmckenna@gme-law.com  
9 Email: gegleston@gme-law.com

10 Counsel for Plaintiff

11 **WILSON SONSINI GOODRICH &**  
12 **ROSATI**  
13 Professional Corporation

14 By: /s/ Boris Feldman  
15 Boris Feldman  
16 650 Page Mill Road  
17 Palo Alto, CA 94304  
18 Telephone: (650) 493-9300  
19 Facsimile: (650) 493-6811  
20 boris.feldman@wsgr.com

21 Attorneys for Defendants Brocade  
22 Communications Systems, Inc., Lloyd A.  
23 Carney, Judy Bruner, Renato A. DiPentima,  
24 Alan L. Earhart, John W. Gerdelman, Kim  
25 C. Goodman, David L. House, L. William  
26 Krause, David E. Roberson, and Sanjay  
27 Vaswani

28 **IT IS SO ORDERED.**

Because this case has been related to an earlier-filed case (C-16-7081 EMC) as well as several other cases, the Court expects Plaintiff in the instant case to meet and confer with plaintiffs' counsel in the other cases as to the appropriate timing of any fee motion.

United States District Court Judge

