

EXHIBIT 1

EXECUTION COPY

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15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**
WESTERN DIVISION

17 In re BROADCOM CORPORATION }
18 CLASS ACTION LITIGATION } Lead Case No.: CV-06-5036-R (CWx)
19 }
20 } STIPULATION AND AGREEMENT
21 } OF SETTLEMENT WITH ERNST &
22 } YOUNG LLP
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EXECUTION COPY

1 This stipulation and agreement of settlement (“Stipulation,” “Settlement”, or
2 “EY Settlement”) is made and entered into by and between New Mexico State
3 Investment Council (“Lead Plaintiff” or “Class Representative”), on behalf of itself
4 and the certified Class, and Ernst & Young LLP (“EY” and, collectively, the
5 “Parties”).

6 **WHEREAS:**

7 A. All words or terms used herein that are capitalized shall have the
8 meaning ascribed to those words or terms as set forth below and in ¶ 1 hereof
9 entitled “Certain Definitions.”

10 B. On October 12, 2006, the Class Representative filed a motion with the
11 U.S. District Court for the Central District of California (the “Court”) for
12 appointment as lead plaintiff in the above-referenced action, entitled *In re*
13 *Broadcom Corporation Class Action Litigation* (the “Litigation”). By order dated
14 November 27, 2006, the Court appointed New Mexico to serve as Lead Plaintiff
15 and, on April 3, 2008, approved its selection of Thomas A. Dubbs of Labaton
16 Sucharow LLP to serve as Lead Counsel.

17 C. On April 21, 2008, the Class Representative filed a Consolidated
18 Class Action Complaint (the “Consolidated Complaint”), alleging claims under
19 Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 against
20 defendants Broadcom Corporation (“Broadcom”), Henry Samueli (“Samueli”),
21 Henry T. Nicholas, III (“Nicholas”), William J. Ruehle (“Ruehle”), David A. Dull
22 (“Dull”), Werner F. Wolfen (“Wolfen”), Alan E. Ross (“Ross”), George L.
23 Farinsky (“Farinsky”) and EY. The Consolidated Complaint asserted claims on
24 behalf of all persons and entities who purchased or otherwise acquired Broadcom’s
25 Class A common stock during the period between July 21, 2005 and July 13, 2006,
26 inclusive.

27 D. On June 20, 2008, each of the defendants moved to dismiss the
28 Consolidated Complaint. On October 6, 2008, the Court granted defendants’

1 motions to dismiss, without prejudice, finding that the Consolidated Complaint
2 failed to adequately allege loss causation.

3 E. On October 27, 2008, the Class Representative filed a Consolidated
4 Amended Class Action Complaint (the “Amended Complaint”). The Amended
5 Complaint set forth additional alleged facts concerning defendants’ alleged
6 scienter, and provides a detailed discussion of the Class Representative’s purported
7 loss causation theory, as devised by the Class Representative and its economic
8 consultants.

9 F. Each defendant moved to dismiss the Amended Complaint on
10 November 24, 2008. On February 4, 2009, the Court entered an Order dismissing
11 all claims asserted against Nicholas with prejudice. On February 10, 2009, the
12 Court entered an Order dismissing with leave to amend all claims asserted against
13 EY and Farinsky. On February 11, 2009, the Court entered an Order denying the
14 remaining defendants’ motions to dismiss.

15 G. On February 18, 2009, the Class Representative filed a notice of intent
16 not to amend the Amended Complaint as to EY and Farinsky, acknowledging that,
17 as a result, the orders dismissing both parties were with prejudice. The Class
18 Representative appealed the dismissal of EY to the United States Court of Appeals
19 for the Ninth Circuit (the “Court of Appeals”).

20 H. On March 4, 2009, the Court appointed John Francis Carroll as
21 Special Master to oversee certain pre-trial matters in this Litigation. Throughout
22 the course of this Litigation, the parties raised and briefed a number of disputes
23 before Special Master Carroll.

24 I. In December 2009, the court in the Criminal Action dismissed the
25 criminal charges against Broadcom’s former CEO and former CFO, as well as
26 charges against Broadcom’s then-former Chief Technical Officer in the criminal
27 action captioned *U.S. v. Samueli*, Case No. CR-08-00156 (C.D. Cal.) (collectively
28 with the Criminal Action, the “Criminal Actions”).

1 J. In connection with the ongoing litigation with Broadcom, the Class
2 Representative issued seven (7) document requests and fourteen (14) subpoenas to
3 Defendants and various third parties, and reviewed and analyzed over 4 million
4 pages of responsive documents.

5 K. On August 12, 2010, the Court entered the Final Order and Judgment
6 as to Broadcom Defendants, approving a settlement between the Class
7 Representative, Broadcom, and certain related defendants (the “Broadcom
8 Settlement”), which is now effective.

9 L. On November 1, 2010, the Court of Appeals heard oral argument
10 from the Parties. By order entered April 14, 2011, the Court of Appeals reversed
11 the Court’s ruling granting EY’s motion to dismiss, and remanded the case for
12 further proceedings consistent with its opinion.

13 M. Following remand, EY filed a motion to dismiss on the ground of loss
14 causation, an issue not addressed in the Court’s order entered February 10, 2009 or
15 the Court of Appeal’s opinion. Following oral argument on EY’s motion to dismiss
16 on August 9, 2011, by order entered August 19, 2011, the Court denied EY’s
17 motion. Discovery commenced thereafter, with the Class Representative issuing
18 additional document requests to EY and receiving additional document
19 productions.

20 N. On May 9, 2012, the Court entered the Order Certifying the Proposed
21 Class and Appointing Class Representative and Class Counsel (the “Class
22 Certification Order”).

23 O. The parties in the shareholder derivative action captioned *In re:*
24 *Broadcom Corp. Derivative Litigation*, Docket No. 06-cv-3252, pending in the
25 U.S. District Court for the Central District of California (the “Derivative Action”),
26 have settled that action.

27 P. Settlement discussions concerning the Litigation initially commenced
28 in late Spring 2008. The Class Representative attended a mediation session with

1 all defendants, including EY, on June 17, 2008, before the Honorable Daniel
2 Weinstein (Ret.) and Special Master Carroll, who had been presiding over
3 settlement discussions in the Derivative Action. Although the June 17 mediation
4 session did not result in a settlement at that time, it laid the groundwork for the
5 parties to resume their settlement discussions at a later date.

6 Q. Thereafter, settlement discussions resumed and on May 31, 2012, the
7 Class Representative and EY participated in a full-day mediation, attended by
8 client representatives on both sides, regarding potential settlement of the Litigation
9 facilitated by Special Master Carroll and Hon. Layn R. Phillips (Ret.). In
10 connection with the mediation process, the Class Representative conducted arm's-
11 length negotiations with respect to a potential compromise and settlement of the
12 Litigation with a view toward achieving the best relief possible consistent with the
13 interests of the Class. The Parties were unable to reach agreement as to a
14 settlement at the conclusion of the mediation session, however they did reach an
15 agreement on a streamlined discovery plan that would, among other things, utilize
16 testimony taken in the Derivative Action so that deposition discovery could
17 commence on an expedited basis. In accordance with the discovery plan, the
18 parties completed all depositions of percipient witnesses and document discovery
19 by August 2012.

20 R. Discovery provided a foundation for continued settlement discussions.
21 On September 5, 2012, the Class Representative and EY participated in a second
22 full-day mediation session facilitated again by Special Master Carroll and Judge
23 Phillips, which was also attended by client representatives. The discussions were
24 frank and arm's-length, however the Parties were unable on that day to bridge the
25 gap between their positions and reach an agreement. The mediators did make a
26 proposal to the Class Representative and EY for each to consider. This proposal
27 was ultimately accepted by the Parties and on September 13, 2012, they entered
28 into the Agreement in Principle to settle the Litigation.

1 S. EY has denied and continues to deny any fault, liability, or
2 wrongdoing of any kind. EY has denied and continues to deny each and all of the
3 claims and contentions alleged by Class Representative on behalf of the Class.
4 Although Broadcom restated certain of its financial statements due to stock option
5 issues, EY has denied and continues to deny, among other things, the allegations
6 that the price of Broadcom stock was artificially inflated by reasons of any alleged
7 “scheme,” misrepresentations, omissions, or otherwise. EY further maintains that
8 throughout the Class Period it engaged in no fraudulent scheme. EY has further
9 denied and continues to deny that Class Representative or any other Broadcom
10 shareholder or any member of the Class was harmed or suffered any loss as a result
11 of the conduct alleged in the Litigation. This Stipulation, whether or not
12 consummated, any proceedings relating to any settlement, or any of the terms of
13 any settlement, whether or not consummated, shall in no event be construed as, or
14 deemed to be evidence of, an admission or concession on the part of EY with
15 respect to any claim or of any fault or liability or wrongdoing or damage
16 whatsoever, or any infirmity in any defense that EY has or could have asserted.
17 EY states that it is entering into this Settlement to eliminate the burden, expense,
18 uncertainty, distraction and risk of further litigation.

19 T. Class Representative believes that the claims asserted in the Litigation
20 have merit and that the evidence developed to date supports the claims asserted.
21 However, Class Representative and Class Counsel recognize and acknowledge the
22 expense and length of continued proceedings necessary to prosecute the Litigation
23 against EY through trial and appeals. Class Representative and Class Counsel also
24 have taken into account the uncertain outcome and the risk of any litigation,
25 especially in complex actions such as the Litigation, as well as the difficulties and
26 delays inherent in such litigation. Class Counsel also is mindful of the inherent
27 problems of proof of and the possible defenses to the violations asserted in the
28 Litigation. Class Representative and Class Counsel believe that the settlement set

1 forth in this Stipulation confers substantial monetary benefits upon the Class.
2 Based on their evaluation, Class Representative and Class Counsel have
3 determined that the settlement set forth in this Stipulation is in the best interests of
4 Class Representative and the Class.

5 **NOW THEREFORE**, without any concession by Class Representative that
6 the Litigation lacks merit, and without any concession by EY of any liability or
7 wrongdoing or lack of merit in its defenses, it is hereby **STIPULATED AND**
8 **AGREED**, by and among the Parties to this Stipulation, through their respective
9 attorneys, subject to approval by the Court pursuant to Rule 23(e) of the Federal
10 Rules of Civil Procedure, that, in consideration of the benefits flowing to the
11 Parties hereto, all Released Claims and all Released Defendant's Claims as against
12 all Released Parties shall be compromised, settled, released and dismissed with
13 prejudice, and without costs, upon and subject to the following terms and
14 conditions:

15
16 **CERTAIN DEFINITIONS**

17 1. As used in this Stipulation and the exhibits annexed hereto, the
18 following terms shall have the meanings set forth below:

19 (a) "Authorized Claimant" means a Class Member who timely
20 submits a valid claim to the Claims Administrator, which claim is allowed by the
21 Court.

22 (b) "Claims Administrator" means the firm of The Garden City
23 Group, Inc., which has been retained by Class Counsel, subject to Court approval,
24 to issue notice, process claims and administer the Settlement.

25 (c) "Class" means all persons and entities that purchased or
26 otherwise acquired the Class A common stock of Broadcom Corporation during
27 the period from February 14, 2006 through May 25, 2006, inclusive, and were
28 allegedly damaged thereby, as set forth in the Class Certification Order. In

1 addition to the terms of the Class Certification Order, excluded from the Class are:
2 the current or former defendants in the Litigation; the partners, directors, and
3 principals of EY; the members of the immediate families of the former individual
4 defendants in the Litigation; the legal representatives, heirs, successors or assigns
5 of any excluded Person; any entity in which any current or former defendant has or
6 had a controlling interest; shares of Broadcom Class A common stock purchased
7 by any Broadcom employee who acquired the shares through the exercise of
8 incentive stock options from February 14, 2006 through May 25, 2006, inclusive;
9 and any Person who timely and validly seeks exclusion from the Class.

10 (d) “Class Certification Order” means the Order Certifying the
11 Proposed Class and Appointing Class Representative and Class Counsel, entered
12 by the Court on May 9, 2012, which certified the Class, set forth the Class Period,
13 appointed the Class Representative, and appointed Class Counsel.

14 (e) “Class Counsel” means the law firm of Labaton Sucharow LLP.

15 (f) “Class Member” means any person or entity that is a member of
16 the Class and not excluded therefrom.

17 (g) “Class Period” means the period from February 14, 2006
18 through May 25, 2006, inclusive.

19 (h) “Company” means Broadcom Corporation.

20 (i) “Court” means the United States District Court for the Central
21 District of California, Western Division.

22 (j) “Defendant” means EY.

23 (k) “Defendant’s Counsel” means the law firm of Morrison &
24 Foerster LLP.

25 (l) “Derivative Action” means the shareholder derivative action
26 captioned *In re: Broadcom Corp. Derivative Litigation*, Docket No. 06-cv-3252,
27 pending in the U.S. District Court for the Central District of California, with
28 respect to which all parties reserve their rights.

1 (m) “Distribution Order” means an order of the Court approving the
2 Claims Administrator’s administrative determinations concerning the acceptance
3 and rejection of the claims to the Settlement and approving any fees and expenses
4 not previously paid, including the fees and expenses of the Claims Administrator
5 and, if the Effective Date has occurred, directing payment of the Net Settlement
6 Fund to Authorized Claimants.

7 (n) “Effective Date” has the meaning set forth in ¶ 38.

8 (o) “Escrow Account” means the interest bearing account to be
9 established by Class Counsel at a federally-insured banking institution.

10 (p) “Escrow Agent” means Class Counsel.

11 (q) “Final,” with respect to any Court order, including but not
12 limited to the Judgment, means the later of: (i) if there is an appeal from the
13 Judgment or order, the date of final affirmance on appeal and the expiration of the
14 time for any further judicial review whether by appeal, reconsideration or a petition
15 for a writ of certiorari and, if certiorari is granted, the date of final affirmance of
16 the Judgment or order following review pursuant to the grant; or (ii) the date of
17 final dismissal of any appeal from the Judgment or order or the final dismissal of
18 any proceeding on certiorari to review the Judgment or order; or (iii) the expiration
19 of the time for the filing or noticing of any appeal or petition for certiorari from the
20 Court’s Judgment or order, which is thirty (30) calendar days after the Judgment or
21 order is entered on the Court’s docket (or, if the date for taking an appeal or
22 seeking review of the Judgment or order shall be extended beyond this time by
23 order of the Court, by operation of law or otherwise, or if such extension is
24 requested, the date of expiration of any extension if any appeal or review is not
25 sought); or (iv) if the Court enters a judgment in a form other than set forth in
26 Exhibit B hereto (an “Alternative Judgment”) and the Settlement is not terminated,
27 the date that such Alternative Judgment becomes final as defined in parts (i) to (iii)
28 above and no longer subject to appeal or review However, any appeal or

1 proceeding seeking subsequent judicial review pertaining solely to the Plan of
2 Allocation of the Net Settlement Fund, or to the Court’s award of attorneys’ fees or
3 expenses, shall not in any way delay or affect the time set forth above for the
4 Judgment or Alternative Judgment to become Final, or otherwise preclude the
5 Judgment or Alternative Judgment from becoming Final.

6 (r) “Judgment” means the proposed judgment to be entered
7 approving the Settlement substantially in the form attached hereto as Exhibit B.

8 (s) “Litigation” means *In re Broadcom Corp. Class Action*
9 *Litigation*, Docket No. cv-06-5036-R (CWx), pending in the United States District
10 Court for the Central District of California, Western Division, before the
11 Honorable Manuel L. Real.

12 (t) “Net Settlement Fund” means the Settlement Fund less: (i)
13 Court awarded attorneys’ fees and expenses; (ii) Notice and Administration
14 Expenses; (iii) Taxes; and (iv) any other fees or expenses approved by the Court,
15 including any award to the Class Representative of its reasonable costs and
16 expenses (including lost wages).

17 (u) “Notice” means the Notice of Pendency of Class Action and
18 Proposed Settlement with Ernst & Young LLP and Motion for Attorneys’ Fees and
19 Expenses, which is to be sent to members of the Class substantially in the form
20 attached hereto as Exhibit 1 to Exhibit A hereto.

21 (v) “Notice and Administration Expenses” means all fees and
22 expenses incurred in connection with: (i) the preparation and printing of the
23 Notice; (ii) providing notice to the Class by mail, publication and other means; (iii)
24 receiving, reviewing, and/or calculating claims; (iv) applying the Plan of
25 Allocation; (v) corresponding with Class Members; and (vi) fees related to the
26 Escrow Account and investment of the Settlement Fund.

27 (w) “Party” or “Parties” means EY, the Class and Class
28 Representative.

1 (x) “Person” means an individual, his or her spouse, corporation
2 (including all divisions and subsidiaries), general or limited partnership,
3 association, joint stock company, joint venture, limited liability company,
4 professional corporation, estate, legal representative, trust, unincorporated
5 association, government or any political subdivision or agency thereof, and any
6 other business or legal entity and its heirs, predecessors, successors, representatives
7 or assigns.

8 (y) “Preliminary Approval Order” means the proposed order
9 preliminarily approving the Settlement and directing notice to the Class of the
10 pendency of the Litigation and of the Settlement, which shall be substantially in
11 the form attached hereto as Exhibit A.

12 (z) “Proof of Claim” means the Proof of Claim and Release form
13 for submitting a claim, which shall be substantially in the form attached as Exhibit
14 2 to Exhibit A hereto.

15 (aa) “Released Claims” collectively means any and all claims, debts,
16 demands, rights, causes of action or liabilities (including, but not limited to, any
17 claims for negligence, gross negligence, recklessness, intentional conduct,
18 damages, interest and any other costs, expenses or liability) of every nature and
19 description whatsoever, known or unknown, whether based on federal, state, local,
20 statutory or common law or any other law, rule or regulation, whether fixed or
21 contingent, suspected or unsuspected, whether or not concealed or hidden, accrued
22 or unaccrued, liquidated or not liquidated, at law or in equity, matured or not
23 matured, Class-wide or individual in nature, including both known claims and
24 Unknown Claims (as defined below), (a) that have been asserted in this Litigation
25 by the Class Members or any of them against any of the Released Defendant
26 Parties, or (b) that could have been asserted in the Litigation or any other forum by
27 the Class Members or any of them against any of the Released Defendant Parties,
28 that arise out of, are based upon, or relate in any way to the allegations,

1 transactions, facts, matters or occurrences, representations or omissions involved,
2 set forth, or referred to in the Litigation or that arise out of, are based upon, or
3 relate in any way to Broadcom's grants of stock options between April 1998 and
4 May 2003 and EY's 2005 audit opinion relating thereto and the purchase or sale of
5 Broadcom Class A common stock during the Class Period. Released Claims do
6 not include: (i) the plaintiffs' claims asserted in the Derivative Action and/or the
7 State Derivative Action; (ii) claims to enforce the Settlement; (iii) claims
8 Broadcom has brought against EY and claims that EY has brought against
9 Broadcom, if any; or (iv) any governmental or regulatory agency's claims asserted
10 in any criminal or civil action against any of the current or former defendants.

11 (bb) "Released Defendant's Claims" means all claims, rights and
12 causes of action of every nature and description, whether known or Unknown (as
13 defined below), whether arising under federal, state, or any other law, that EY
14 asserted, or could have asserted, against any of the Released Plaintiff Parties that
15 arise out of or relate in any way to the commencement, prosecution, settlement or
16 resolution of the Litigation (other than claims to enforce the Settlement).

17 (cc) "Released Defendant Parties" means EY; each of its current or
18 former officers, directors, employees, partners, principals, agents, attorneys,
19 personal or legal representatives, consultants, experts, predecessors, successors,
20 parents, subsidiaries, divisions, joint ventures, assigns, general or limited partners
21 or partnerships, limited liability companies, spouses, heirs, executors, estates,
22 administrators, related or affiliated entities; and any entity in which EY has a
23 controlling interest.

24 (dd) "Released Parties" means the Released Defendant Parties and
25 the Released Plaintiff Parties collectively.
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1 (ee) “Released Plaintiff Parties” means Class Representative, the
2 Class, Class Counsel and their respective partners, employees, heirs, executors,
3 administrators, trustees, successors, predecessors and assigns.

4 (ff) “Settlement” means the resolution of the Litigation as against
5 EY in accordance with the terms and provisions of this Stipulation.

6 (gg) “Settlement Amount” means the total principal amount of
7 \$13,000,000.00 in cash.

8 (hh) “Settlement Fund” means (i) \$13,000,000.00 in cash to be paid
9 by or on behalf of EY into the Escrow Account (as set forth in ¶ 5 below) and (ii)
10 any earnings on any monies held in the Escrow Account.

11 (ii) “Settlement Hearing” means the hearing to be held by the Court
12 to determine whether the proposed Settlement is fair, reasonable and adequate and
13 should be approved.

14 (jj) “State Derivative Action” means the consolidated state actions
15 known as *In re Broadcom Corp. Derivative Litigation*, Lead Case No. 06CC00124,
16 pending in the Superior Court of the State of California, County of Orange.

17 (kk) “Stipulation” means this Stipulation and Agreement of
18 Settlement with Ernst & Young LLP.

19 (ll) “Summary Notice” means the Summary Notice of Pendency of
20 Class Action and Proposed Settlement With Ernst & Young LLP and Motion for
21 Attorneys’ Fees and Expenses for publication, which shall be substantially in the
22 form attached as Exhibit 3 to Exhibit A hereto.

23 (mm) “Taxes” means all taxes on the income of the Settlement Fund
24 and expenses and costs incurred in connection with the taxation of the Settlement
25 Fund (including, without limitation, interest, penalties and the expenses of tax
26 attorneys and accountants).

27 (nn) “Unknown Claims” means any and all Released Claims, which
28 the Class Representative or any Class Member does not know or suspect to exist in

1 his, her or its favor at the time of the release of the Released Defendant Parties, and
2 any Released Defendant's Claims that EY does not know exist in its favor at the
3 time of the release of the Released Plaintiff Parties, which if known by it might
4 have affected its decisions with respect to the Settlement. With respect to any and
5 all Released Claims and Released Defendant's Claims, the Parties stipulate and
6 agree that, upon the Effective Date, Class Representative and EY shall expressly,
7 and each Class Member shall be deemed to have, and by operation of the Judgment
8 shall have, expressly waived and relinquished any and all provisions, rights and
9 benefits conferred by any law of any state or territory of the United States, or
10 principle of common law, which is similar, comparable, or equivalent to Cal. Civ.
11 Code § 1542, which provides:

12 **A general release does not extend to claims which the**
13 **creditor does not know or suspect to exist in his or her**
14 **favor at the time of executing the release, which if**
known by him or her must have materially affected
his or her settlement with the debtor.

15 Class Representative, the Class Members or EY may hereafter discover facts in
16 addition to or different from those which he, she, or it now knows or believes to be
17 true with respect to the subject matter of the Released Claims, but Class
18 Representative and EY shall expressly, fully, finally and forever settle and release,
19 and each Class Member shall be deemed to have settled and released, and upon the
20 Effective Date and by operation of the Judgment shall have settled and released,
21 fully, finally, and forever, any and all Released Claims, without regard to the
22 subsequent discovery or existence of such different or additional facts. Class
23 Representative and EY acknowledge, and other Class Members by operation of
24 law shall be deemed to have acknowledged, that the inclusion of "Unknown
25 Claims" in the definition of Released Claims and Released Defendant's Claims
26 was separately bargained for and was a key element of the Settlement.
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SCOPE AND EFFECT OF SETTLEMENT

2. The obligations incurred pursuant to this Stipulation are, subject to approval by the Court and such approval becoming Final, in full and final disposition of the Litigation with respect to the Released Parties and any and all Released Claims and Released Defendant’s Claims.

3. As of the Effective Date, Class Representative and each and every Class Member on behalf of themselves, and each of their respective heirs, executors, trustees, administrators, predecessors, successors and assigns by operation of the Judgment, shall have fully, finally and forever waived, released, discharged and dismissed each and every one of the Released Claims against each and every one of the Released Defendant Parties and shall forever be barred and enjoined, without the necessity of posting a bond, from commencing, instituting, prosecuting or maintaining any of the Released Claims against any of the Released Defendant Parties.

4. As of the Effective Date, EY, on behalf of itself and its heirs, executors, trustees, administrators, predecessors, successors and assigns by operation of the Judgment, shall have fully, finally and forever waived, released, discharged and dismissed each and every one of the Released Defendant’s Claims, as against each and every one of the Released Plaintiff Parties and shall forever be barred and enjoined, without the necessity of posting a bond, from commencing, instituting, prosecuting or maintaining any of the Released Defendant’s Claims against any of the Released Plaintiff Parties.

THE SETTLEMENT CONSIDERATION

5. In full settlement of the claims asserted in the Litigation against EY and in consideration of the releases specified in ¶¶ 3 and 4, above, EY shall pay or cause to be paid the sum of \$13,000,000.00 in cash (the “Settlement Amount”). The Settlement Amount shall be deposited by or on behalf of EY into the Escrow

1 Account, by wire transfer pursuant to instructions to be supplied by Class Counsel,
2 no later than ten (10) calendar days after the date on which the Court enters an
3 order preliminarily approving the Settlement. The Settlement Amount together
4 with any interest shall constitute the Settlement Fund.

5 6. With the sole exception of EY's obligation to make payment into the
6 Escrow Account as provided for in ¶ 5, the Released Defendant Parties and
7 Defendant's Counsel shall have no responsibility or liability with respect to the
8 Escrow Account or the monies maintained in the Escrow Account, including,
9 without limitation, any responsibility or liability related to any fees, taxes and tax
10 expenses, investment decisions, maintenance, supervision or distributions of any
11 portion of the Settlement Amount.

12
13 **USE AND TAX TREATMENT OF SETTLEMENT FUND**

14 7. The Settlement Fund shall be used: (i) to pay any Taxes; (ii) to pay
15 Notice and Administration Expenses; (iii) to pay any attorneys' fees and expenses
16 awarded by the Court; (iv) to pay any costs and expenses allowed by the Private
17 Securities Litigation Reform Act, 15 U.S.C. §78u-4, and awarded to Class
18 Representative by the Court; and (v) to pay claims to Authorized Claimants.

19 8. The Net Settlement Fund shall be distributed to Authorized Claimants
20 as provided in ¶¶ 21 through 33 hereof. The Net Settlement Fund shall remain in
21 escrow prior to the Effective Date. All funds held in the Escrow Account shall be
22 deemed to be in the custody of the Court and shall remain subject to the
23 jurisdiction of the Court until such time as the funds shall be distributed or
24 returned, pursuant to ¶ 43 of this Stipulation, and/or further order of the Court.
25 The Escrow Agent shall invest funds in the Escrow Account in instruments backed
26 by the full faith and credit of the United States Government (or a mutual fund
27 invested solely in such instruments), or deposit some or all of the funds in non-
28 interest-bearing transaction account(s) that are fully insured by the Federal Deposit

1 Insurance Corporation (“FDIC”) in amounts that are up to the limit of FDIC
2 insurance. The Released Defendant Parties and Defendant’s Counsel shall have no
3 responsibility for, interest in, or liability whatsoever with respect to investment
4 decisions or the actions of the Escrow Agent, or any transaction executed by the
5 Escrow Agent.

6 9. After the Settlement Amount has been paid into the Escrow Account
7 in accordance with ¶ 5 above, the Parties agree to treat the Settlement Amount as a
8 “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1. In
9 addition, Class Counsel shall timely make, or cause to be made, such elections as
10 necessary or advisable to carry out the provisions of this paragraph, including the
11 “relation-back election” (as defined in Treas. Reg. § 1.468B-1) back to the earliest
12 permitted date. Such election shall be made in compliance with the procedures and
13 requirements contained in such regulations. It shall be the responsibility of Class
14 Counsel to timely and properly prepare and deliver, or cause to be prepared and
15 delivered, the necessary documentation for signature by all necessary parties, and
16 thereafter take all such actions as may be necessary or appropriate to cause the
17 appropriate filing to occur.

18 (a) For the purposes of Section 468B of the Internal Revenue Code
19 of 1986, as amended, and Treas. Reg. § 1.468B promulgated thereunder, the
20 “administrator” shall be Class Counsel or its successor, which shall timely and
21 properly file, or cause to be filed, all informational and other tax returns necessary
22 or advisable with respect to the interest earned on the fund deposited in the Escrow
23 Account (including without limitation the returns described in Treas. Reg. §
24 1.468B-2(k)). Such returns (as well as the election described above) shall be
25 consistent with this subparagraph and in all events shall reflect that all taxes
26 (including any estimated taxes, interest, or penalties) on the income earned on the
27 funds deposited in the Escrow Account shall be paid out of such funds as provided
28 in subparagraph (c) hereof.

1 (b) Taxes on the income of the Settlement Fund and expenses and
2 costs incurred in connection with the taxation of the Settlement Fund (including,
3 without limitation, interest, penalties and the expenses of tax attorneys and
4 accountants) (collectively “Taxes”), shall be paid solely out of the Escrow
5 Account. In all events, the Released Defendant Parties and Defendant’s Counsel
6 shall have no liability or responsibility whatsoever for the Taxes or the filing of
7 any tax returns or other documents with the Internal Revenue Service or any other
8 state or local taxing authority. In the event any Taxes are owed by any of the
9 Released Defendant Parties on any interest earned on the funds on deposit in the
10 Escrow Account, such amounts shall also be paid out of the Escrow Account. Any
11 Taxes owed on any interest earned on the Settlement Amount prior to its transfer to
12 the Escrow Account shall be the sole responsibility of EY.

13 (c) Taxes shall be treated as, and considered to be, a cost of
14 administration of the Settlement and shall be timely paid, or caused to be paid, by
15 Class Counsel out of the Escrow Account without prior order from the Court or
16 approval of EY, and Class Counsel shall be obligated (notwithstanding anything
17 herein to the contrary) to withhold from distribution to Authorized Claimants any
18 funds necessary to pay such amounts (as well as any amounts that may be required
19 to be withheld under Treas. Reg. § 1.468B-2(1)(2)). The Parties agree to cooperate
20 with each other, their tax attorneys, and accountants to the extent reasonably
21 necessary to carry out the provisions of this paragraph.

22 10. This is not a claims-made settlement. As of the Effective Date, EY
23 shall not have any right to the return of the Settlement Fund or any portion thereof
24 for any reason.

25
26 **ATTORNEYS’ FEES AND EXPENSES**

27 11. Class Counsel, on behalf of all plaintiffs’ counsel in the Litigation,
28 will apply to the Court for an award from the Settlement Fund of (i) attorneys’ fees

1 and (ii) reimbursement of litigation expenses incurred in prosecuting the Litigation,
2 plus any interest on such amounts at the same rate and for the same periods as
3 earned by the Settlement Fund (“Fee and Expense Application”). EY and its
4 counsel shall take no position on the Fee and Expense Application. The timing set
5 forth below in ¶ 12 for payment of any attorneys’ fees and expenses is a material
6 term of the Settlement and was separately bargained for by the Parties.

7 12. As part of the Fee and Expenses Application, Class Counsel will
8 request that eighty percent (80%) of any attorneys’ fees and expenses awarded by
9 the Court shall be paid from the Settlement Fund to Class Counsel immediately
10 upon execution of the Judgment, notwithstanding the existence of any timely-filed
11 objections to the order awarding such attorneys’ fees and expenses or the
12 Judgment, or potential for appeal therefrom, or collateral attack on the Settlement
13 or any part thereof. Class Counsel will also request that twenty percent (20%) of
14 any attorneys’ fees and expenses awarded by the Court shall be paid from the
15 Settlement Fund to Class Counsel the day after the filing of Class Representative’s
16 Motion for Distribution Order Approving Administrative Determinations and
17 Directing Payment of Net Settlement Fund in Connection with EY Settlement.

18 13. Class Counsel shall determine and distribute the attorneys’ fees
19 among plaintiffs’ counsel in a manner in which they believe reflects the
20 contributions of such counsel to the prosecution and settlement of the Litigation
21 with EY and the benefits conferred on the Class.

22 14. In the event that the Judgment or the order making any attorneys’ fee
23 and expense award is reversed or modified on appeal by Final order, and in the
24 event that any attorneys’ fee and expense award has been paid to any extent, then
25 Class Counsel shall, within twenty-one (21) calendar days from entry of any such
26 Final order, refund to the Escrow Account the fees, expenses, costs, and interest
27 paid to any plaintiffs’ counsel from the Escrow Account, including accrued interest
28 on any such amount at the average rate earned on the Escrow Account from the

1 time of withdrawal until the date of refund. Further, Class Counsel agrees, and
2 each plaintiffs' counsel's law firm that receives any portion of such fee and
3 expense award shall be bound by virtue of the Court order awarding fees, on behalf
4 of themselves and each of their partners and/or shareholders, that each law firm
5 and each of its partners and/or shareholders are subject to the jurisdiction of the
6 Court for the purpose of enforcing the provisions of this ¶ 14.

7 15. Class Representative and Class Counsel may not cancel or terminate
8 the Stipulation or the Settlement in accordance with ¶ 39 or otherwise based on this
9 Court's or any appellate court's ruling with respect to the Fee and Expense
10 Application or other fee and expense award in the Litigation. With the sole
11 exception of making payment into the Escrow Account as provided for in ¶ 5, the
12 Released Defendant Parties shall have no responsibility for, and no liability
13 whatsoever with respect to, any payment to Class Counsel or any plaintiff's
14 counsel that may occur at any time.

15 16. The Released Defendant Parties shall have no responsibility for, and
16 no liability whatsoever with respect to, the allocation of any attorneys' fees or
17 expenses among any plaintiff's counsel, or any other Person who may assert some
18 claim thereto, or any fee or expense awards the Court may make in the Litigation.

19 17. The Released Defendant Parties shall have no responsibility for, and
20 no liability whatsoever with respect to, any attorneys' fees, costs, or expenses
21 incurred by or on behalf of the Class Members, whether or not paid from the
22 Escrow Account.

23 18. The procedure for and the allowance or disallowance by the Court of
24 any Fee and Expense Application are not part of the Settlement set forth in this
25 Stipulation, and are separate from the Court's consideration of the fairness,
26 reasonableness and adequacy of the Settlement set forth in the Stipulation, and any
27 order or proceeding relating to any fee and expense application, or any appeal from
28 any order relating thereto or reversal or modification thereof, shall not operate to

1 terminate or cancel the Stipulation, or affect or delay the finality of the Judgment
2 approving the Stipulation and the Settlement set forth herein, including, but not
3 limited to, the release, discharge, and relinquishment of the Released Claims
4 against the Released Defendant Parties, or any other orders entered pursuant to the
5 Stipulation.

6
7 **ADMINISTRATION EXPENSES**

8 19. Except as otherwise provided herein, the Settlement Fund shall remain
9 in escrow pending (i) final approval of the Settlement by the Court, (ii) the
10 expiration of all rights of appeal of the Judgment, and (iii) the final denial of any
11 and all appeals or objections or collateral attacks or challenges to the Settlement.

12 20. Prior to the Effective Date and without further order of the Court,
13 Class Counsel may expend up to \$500,000.00 from the Settlement Fund to pay the
14 Notice and Administration Expenses actually incurred. Such costs and expenses
15 shall include, without limitation, the actual costs of publication, printing and
16 mailing the notice packet, reimbursements to nominee owners for forwarding the
17 notice packet to their beneficial owners, the administrative expenses incurred and
18 fees charged by the Claims Administrator in connection with providing notice and
19 processing claims, and the fees, if any, related to the Escrow Account and the
20 investment of the Settlement Fund.

21
22 **DISTRIBUTION TO AUTHORIZED CLAIMANTS**

23 21. Class Counsel will apply to the Court for a Distribution Order, on
24 notice to Defendant's Counsel, approving the Claims Administrator's
25 administrative determinations concerning the acceptance and rejection of the
26 claims to the EY Settlement and approving any fees and expenses not previously
27 paid, including the fees and expenses of the Claims Administrator, and, if the
28

1 Effective Date has occurred, directing the payment of the Net Settlement Fund to
2 Authorized Claimants.

3 22. The Claims Administrator shall administer the Settlement under Class
4 Counsel's supervision and subject to the jurisdiction of the Court. Except as stated
5 in ¶¶ 20, 26, and 43 hereof, the Released Defendant Parties and Defendant's
6 Counsel shall have no responsibility for, interest in, or liability whatsoever with
7 respect the administration of the Settlement or the actions or decisions of the
8 Claims Administrator, and shall have no liability to the Class in connection with
9 such administration.

10 23. The Claims Administrator shall determine each Authorized
11 Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized
12 Claimant's Recognized Loss, as defined in the Plan of Allocation of Net
13 Settlement Fund (the "Plan of Allocation") included in the Notice, or in such other
14 plan of allocation as the Court may approve.

15 24. EY will take no position with respect to the Plan of Allocation. The
16 Plan of Allocation is a matter separate and apart from the proposed Settlement
17 between Class Representative and EY, and any decision by the Court concerning
18 the Plan of Allocation shall not affect the validity or finality of the proposed
19 Settlement. The Plan of Allocation is not a necessary term of this Stipulation and
20 it is not a condition of this Stipulation that any particular plan of allocation be
21 approved by the Court. Class Representative and Class Counsel may not cancel or
22 terminate the Stipulation or the Settlement in accordance with ¶ 39 or otherwise
23 based on the Court's or any appellate court's ruling with respect to the Plan of
24 Allocation or any plan of allocation in the Litigation. The Released Defendant
25 Parties and Defendant's Counsel shall have no responsibility or liability for
26 reviewing or challenging claims, the allocation of the Net Settlement Fund, or the
27 distribution of the Net Settlement Fund.

1 **ADMINISTRATION OF THE SETTLEMENT**

2 25. Any member of the Class who fails to timely submit a valid Proof of
3 Claim and Release (substantially in the form of Exhibit 2 to Exhibit A hereto) in
4 the EY Settlement or failed to timely submit a Proof of Claim and Release in the
5 Broadcom Settlement that would be valid in the EY Settlement will not be entitled
6 to receive any of the proceeds from the Net Settlement Fund, except as otherwise
7 ordered by the Court, but will otherwise be bound by all of the terms of this
8 Stipulation and the Settlement, including the terms of the Judgment to be entered
9 in the Litigation and the releases provided for herein, and will be barred from
10 bringing any action against the Released Defendant Parties concerning the
11 Released Claims.

12 26. Class Counsel shall be responsible for supervising the administration
13 of the Settlement and disbursement of the Net Settlement Fund by the Claims
14 Administrator. Except for any obligations arising under ¶¶ 20 and 44, the Released
15 Defendant Parties and Defendant’s Counsel shall have no liability, obligation or
16 responsibility for the administration of the Settlement, the allocation of the Net
17 Settlement Fund or reviewing or challenging of claims of members of the Class.
18 The Claims Administrator shall be The Garden City Group, Inc., subject to
19 approval by the Court.

20 27. Each claimant shall be deemed to have submitted to the jurisdiction of
21 the Court with respect to the claimant’s claim, and the claim will be subject to
22 investigation and discovery under the Federal Rules of Civil Procedure, provided
23 that such investigation and discovery shall be limited to the validity and amount of
24 the claimant’s claim. In connection with processing of the claims, no discovery
25 shall be allowed on the negotiation of the Settlement, or on the merits of the
26 Litigation or of the Settlement.

27 28. Payment pursuant to this Stipulation shall be deemed final and
28 conclusive against all Class Members. All Class Members whose claims are not

1 approved by the Court shall be barred from participating in distributions from the
2 Net Settlement Fund, but otherwise shall be bound by all of the terms of this
3 Stipulation and the Settlement, including the terms of the Judgment to be entered
4 in the Litigation and the releases provided for herein, and will be barred from
5 bringing any action against the Released Defendant Parties concerning the
6 Released Claims.

7 29. All proceedings with respect to the administration, processing and
8 determination of claims described by ¶¶ 21 through 33 of this Stipulation and the
9 determination of all controversies relating thereto, including disputed questions of
10 law and fact with respect to the validity of claims, shall be subject to the
11 jurisdiction of the Court, but shall not in any event delay or affect the finality of the
12 Judgment.

13 30. The Net Settlement Fund shall be distributed to Authorized Claimants
14 by the Claims Administrator only after the Effective Date and after: (i) all timely
15 claims have been processed, and all claimants whose timely claims have been
16 rejected or disallowed, in whole or in part, have been notified and provided the
17 opportunity to be heard concerning such rejection or disallowance; (ii) all
18 objections with respect to all rejected or disallowed claims have been resolved by
19 the Court, and all appeals therefrom have been resolved or the time therefore has
20 expired, unless otherwise ordered by the Court; (iii) all matters with respect to
21 attorneys' fees, costs, and disbursements have been resolved by the Court, all
22 appeals therefrom have been resolved or the time therefore has expired, unless
23 otherwise ordered by the Court; and (iv) all Notice and Administrative Expenses
24 and Taxes have been paid.

25 31. If the funds remaining in the Net Settlement Fund following *pro rata*
26 distribution(s) to all Authorized Claimants are of an amount that is not cost
27 effective or efficient to redistribute to the Class, then such remaining funds, after
28 payment of any further Notice and Administration Expenses and Taxes, shall,

1 subject to approval of the Court, be contributed to an appropriate 501(c)(3)
2 organization(s) at the discretion of Class Counsel.

3 32. No Person shall have any claim of any kind against the Released
4 Defendant Parties or their counsel with respect to the matters set forth in this
5 Section or any of its subsections.

6 33. No Person shall have any claim against the Class Representative or its
7 counsel (including Class Counsel), or any claims administrator, or agent
8 designated by Class Counsel, based on the distributions made substantially in
9 accordance with this Stipulation and the Settlement contained herein, the Plan of
10 Allocation, or further order(s) of the Court.

11
12 **TERMS OF THE PRELIMINARY APPROVAL ORDER**

13 34. Concurrently with their application for preliminary Court approval of
14 the Settlement contemplated by this Stipulation and promptly after execution of
15 this Stipulation, Class Counsel and Defendant's Counsel shall jointly apply to the
16 Court for entry of the Preliminary Approval Order, which shall be substantially in
17 the form annexed hereto as Exhibit A. The Preliminary Approval Order will, *inter*
18 *alia*, set the date for the Settlement Hearing and prescribe the method for giving
19 notice of the Settlement to the Class.

20 35. As ordered by the Court, Class Counsel shall cause the Claims
21 Administrator to mail the Notice and, where applicable, Proof of Claim to
22 members of the Class at the address of each such Person as set forth in the records
23 of Broadcom or its transfer agent(s), or who otherwise may be identified through
24 reasonable effort. Class Counsel shall cause the Claims Administrator to publish
25 the Summary Notice of the proposed Settlement in *The Wall Street Journal* and
26 transmit it over *Business Wire*, or other wire service, within fourteen (14) calendar
27 days of the mailing of the Notice, or according to whatever other form or manner
28 might be ordered by the Court.

1 **TERMS OF THE JUDGMENT**

2 36. If the Settlement contemplated by this Stipulation is approved by the
3 Court, Class Counsel and Defendant’s Counsel shall jointly request that the Court
4 enter a Judgment substantially in the form annexed hereto as Exhibit B.

5 37. Pursuant to § 21D(f)(7) of the Private Securities Litigation Reform
6 Act of 1995, 15 U.S.C. § 78u-4(f)(7), EY, by virtue of the Judgment, shall be
7 discharged from all claims for contribution brought by other Persons. The Court
8 shall include in the Judgment a bar order constituting the final discharge of all
9 obligations to Class Representative and the Class of the Released Defendant
10 Parties arising out of the Litigation. The Judgment shall bar all claims and future
11 claims for contribution arising out of the Litigation by any Person against EY and
12 by EY against any Person, other than a Person whose liability has been
13 extinguished by the Settlement.

14
15 **EFFECTIVE DATE OF SETTLEMENT, WAIVER OR TERMINATION**

16 38. The Effective Date of this Settlement shall be the date when all of the
17 following shall have occurred:

18 (a) entry of the Preliminary Approval Order, which shall be in all
19 material respects substantially in the form set forth in Exhibit A annexed hereto;

20 (b) approval by the Court of the Settlement, following notice to the
21 Class and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil
22 Procedure; and

23 (c) a Judgment, which shall be in all material respects substantially
24 in the form set forth in Exhibit B annexed hereto, has been entered by the Court
25 and has become Final or, in the event that the Court enters an Alternative Judgment
26 and none of the Parties elects to terminate this Settlement, the date that such
27 Alternative Judgment becomes Final.
28

1 39. EY and Class Representative shall have the right to terminate the
2 Settlement and this Stipulation by providing written notice of their election to do
3 so (“Termination Notice”), through counsel, to each other within thirty (30)
4 calendar days of: (a) the Court’s final refusal to enter the Preliminary Approval
5 Order in any material respect; (b) the Court’s final refusal to approve this
6 Stipulation or any material part of it; (c) the Court’s final refusal to enter the
7 Judgment in any material respect; (d) the date upon which the Judgment is
8 modified or reversed in any material respect by the United States Court of Appeals
9 or the Supreme Court of the United States; or (e) in the event that the Court enters
10 an Alternative Judgment and none of the Parties hereto elects to terminate this
11 Settlement, the date upon which such Alternative Judgment is modified or reversed
12 in any material respect by the Court of Appeals or the Supreme Court of the United
13 States.

14 40. Simultaneously herewith, Defendant’s Counsel and Class Counsel are
15 executing a Supplemental Agreement Regarding Settlement (“Supplemental
16 Agreement”). The Supplemental Agreement sets forth certain conditions under
17 which EY shall have the option (which option shall be exercised unilaterally by
18 EY) to terminate the Settlement and render this Stipulation null and void in the
19 event that requests for exclusion from the Class exceed certain agreed-upon criteria
20 (the “Opt-Out Threshold”). The Parties agree to main the confidentiality of the
21 Opt-Out Threshold in the Supplemental Agreement, which shall not be filed with
22 the Court unless a dispute arises as to its terms, or as otherwise ordered by the
23 Court. If submission of the Supplemental Agreement is required for resolution of a
24 dispute or is otherwise ordered by the Court, the Parties will undertake to have the
25 Opt-Out Threshold submitted to the Court *in camera*. Except for the Opt-Out
26 Threshold, all material terms of the Supplemental Agreement are repeated herein:

27 (a) It is expressly understood and agreed by the Parties that the
28 only Persons who may submit requests for exclusion are those Persons who are

1 members of the Class certified by the Court: all persons and entities that purchased
2 or otherwise acquired the Class A common stock of Broadcom during the period
3 from February 14, 2006 through May 25, 2006, inclusive, and were allegedly
4 damaged thereby. Excluded from the Class are: the current or former defendants
5 in the Litigation; the partners, directors, and principals of EY; the members of the
6 immediate families of the former individual defendants in the Litigation; the legal
7 representatives, heirs, successors or assigns of any excluded Person; any entity in
8 which any current or former defendant has or had a controlling interest; shares of
9 Broadcom Class A common stock purchased by any Broadcom employee who
10 acquired the shares through the exercise of incentive stock options from February
11 14, 2006 through May 25, 2006, inclusive;

12 (b) To be valid for purposes of the Opt-Out Threshold and the
13 Supplemental Agreement, a request for exclusion must contain the information
14 requested in the Notice;

15 (c) The Parties shall request that the Preliminary Approval Order
16 provide that requests for exclusion must be received at least fourteen (14) calendar
17 days prior to the Settlement Hearing date. Class Counsel shall provide
18 Defendant's Counsel with copies of any requests for exclusion, and any written
19 revocations of requests for exclusion, as expeditiously as possible, and, in any
20 event, Defendant's Counsel shall receive within three (3) calendar days of the
21 expiration of the request for exclusion deadline but no later than ten (10) calendar
22 days before the Settlement Hearing copies of requests for exclusion of any Class
23 Members who will be identified on Exhibit A to the Judgment as validly and
24 timely requesting exclusion;

25 (d) EY unilaterally shall be entitled to exercise the option to
26 terminate set forth in this paragraph and the Supplemental Agreement only if
27 Defendant's Counsel provides Class Counsel with written notice of EY's election
28 to terminate on or before five (5) calendar days prior to the Settlement Hearing;

1 (e) In the event that EY provides a written notice of termination of
2 the Settlement pursuant to subparagraph (d) above and the Supplemental
3 Agreement, EY may withdraw the termination by providing written notice of such
4 withdrawal of the termination to Class Counsel no later than 5:00 P.M. Eastern
5 Time on the first business day prior to the Settlement Hearing, or by such later date
6 as shall be agreed upon in writing as between Class Counsel and Defendants'
7 Counsel;

8 (f) If EY elects to terminate the Settlement pursuant to this
9 paragraph and the Supplemental Agreement, Class Counsel may upon receipt of
10 such notice of termination, review the validity of any request for exclusion and
11 may attempt to cause retraction of any request for exclusion. If Class Counsel
12 succeeds in causing the filing of retractions of a sufficient number of requests for
13 exclusion such that the number of shares represented by the remaining timely and
14 valid requests for exclusion does not constitute grounds for termination as
15 specified in this paragraph and the Supplemental Agreement, then any termination
16 of the Settlement shall automatically be deemed to be a nullity. To retract a prior
17 request for exclusion, a member of the Class must provide to the Parties' counsel,
18 at least two (2) calendar days prior to the Settlement Hearing, or any adjournment
19 thereof, a written notice stating his, her or its desire to retract his, her or its request
20 for exclusion from the Class; provided, however, that the provision of such written
21 notice may be effected by Class Counsel;

22 (g) If EY elects to terminate the Settlement in accordance with this
23 paragraph and the Supplemental Agreement and such termination is not nullified in
24 accordance with subparagraphs (e) or (f) above and the Supplemental Agreement,
25 the Settlement shall be terminated and the provisions of ¶¶ 43 through 45 of the
26 Stipulation shall apply; and

27 (h) In the event of a termination of this Settlement pursuant to the
28 Supplemental Agreement, this Stipulation shall become null and void and of no

1 further force and effect, with the exception of the provisions of ¶¶ 45 and 47,
2 which shall continue to apply.

3 41. In addition to all of the rights and remedies that the Class
4 Representative and Class Counsel have under the terms of this Stipulation, they
5 shall also have the right to terminate the Settlement in the event that EY does not
6 pay, or cause to be paid, the Settlement Amount as provided in ¶ 5 above, by
7 providing written notice of their election to terminate to EY and, thereafter, EY
8 fails to pay the Settlement Amount within fourteen (14) calendar days of the date
9 EY received the written notice.

10 42. If an option to withdraw from and terminate this Stipulation and
11 Settlement arises under any of ¶¶ 39 through 41 above, (i) neither EY nor Class
12 Representative will be required for any reason or under any circumstance to
13 exercise that option; and (ii) any exercise of that option shall be made in good
14 faith, but in the sole and unfettered discretion of EY or Class Representative, as
15 applicable.

16 43. Except as otherwise provided herein, in the event the Settlement is
17 terminated or fails to become effective for any reason, then: the Settlement shall be
18 without prejudice, and none of its terms shall be effective or enforceable except as
19 specifically provided herein; the Parties to this Stipulation shall be deemed to have
20 reverted to their respective litigation positions in the Litigation immediately prior
21 to the execution of the Agreement in Principle on September 13, 2012; and, except
22 as otherwise expressly provided, the Parties in the Litigation shall proceed in all
23 respects as if this Stipulation and any related orders had not been entered, except
24 that any deadlines that have passed since September 13 will be adjourned
25 consistent with the procedure set forth in ¶ 45. In such event, the fact and terms of
26 the Agreement in Principle or this Stipulation, or any aspect of the negotiations
27 leading to this Stipulation, shall not be admissible in any trial of this Litigation.
28

1 negotiations, proceedings, or agreements, shall not be offered or received against
2 EY for any purpose, and in particular:

3 (a) do not constitute, and shall not be offered or received against
4 EY as evidence of, or construed as, or deemed to be evidence of any presumption,
5 concession or admission by EY with respect to the truth of any fact alleged by
6 Class Representative and the Class or the validity of any claim that has been or
7 could have been asserted in the Litigation or in any litigation, including but not
8 limited to the Released Claims, or of any liability, damages, negligence, fault or
9 wrongdoing of EY;

10 (b) do not constitute, and shall not be offered or received against
11 EY as evidence of a presumption, concession or admission of any fault,
12 misrepresentation or omission with respect to any statement or written document
13 approved or made by EY, or against Class Representative or any other members of
14 the Class as evidence of any infirmity in the claims of Class Representative or the
15 other members of the Class;

16 (c) do not constitute, and shall not be offered or received against
17 EY or against Class Representative or any other members of the Class, as evidence
18 of a presumption, concession or admission with respect to any liability, damages,
19 negligence, fault, infirmity or wrongdoing, or in any way referred to for any other
20 reason as against any of the Parties to this Stipulation, in any other civil, criminal
21 or administrative action or proceeding, other than such proceedings as may be
22 necessary to effectuate the provisions of this Stipulation;

23 (d) do not constitute, and shall not be construed against EY, Class
24 Representative or any other members of the Class, as an admission or concession
25 that the consideration to be given hereunder represents the amount which could be
26 or would have been recovered after trial; and

27 (e) do not constitute, and shall not be construed as or received in
28 evidence as, an admission, concession or presumption against Class Representative

1 or any other members of the Class or any of them that any of their claims are
2 without merit or infirm or that damages recoverable under the Amended
3 Complaint, would not have exceeded the Settlement Amount.

4 47. EY may file this Stipulation and/or the Judgment in any action that
5 may be brought against it in order to support a defense or counterclaim based on
6 principles of res judicata, collateral estoppel, release, good-faith settlement,
7 judgment bar or reduction, or any theory of claim preclusion or issue preclusion or
8 similar defense or counterclaim, or to effectuate the liability protection granted
9 them under any applicable insurance policies. Any Party may file this Stipulation
10 and/or the Judgment in any action that may be brought to enforce the terms of this
11 Stipulation and/or the Judgment. All Parties submit to the jurisdiction of the Court
12 for purposes of implementing and enforcing the Settlement.

13
14 **MISCELLANEOUS PROVISIONS**

15 48. All of the exhibits to the Stipulation, except any Plan of Allocation, to
16 the extent incorporated in those exhibits, are material and integral parts hereof and
17 are fully incorporated herein by this reference.

18 49. The Parties to this Stipulation intend the Settlement of the Litigation
19 to be the full, final and complete resolution of all disputes asserted or which could
20 have been asserted by the Parties with respect to the Released Claims and Released
21 Defendant's Claims. Accordingly, Class Representative and EY agree not to assert
22 in any forum that the Litigation was brought, prosecuted or defended in bad faith
23 or without a reasonable basis. The Parties agree that each has complied fully with
24 Rule 11 of the Federal Rules of Civil Procedure in connection with the
25 maintenance, prosecution, defense and settlement of the Litigation. EY and Class
26 Representative agree that the amount paid and the other terms of the Settlement
27 were negotiated at arm's-length in good faith by EY and Class Representative, and
28 their respective counsel, and reflect a settlement that was reached voluntarily based

1 upon adequate information and after consultation with experienced legal counsel,
2 and under the supervision of the mediators.

3 50. This Stipulation may not be modified or amended, nor may any of its
4 provisions be waived, except by a writing signed by all Parties hereto or their
5 successors.

6 51. The headings herein are used for the purpose of convenience only and
7 are not meant to have legal effect.

8 52. The administration and consummation of the Settlement as embodied
9 in this Stipulation shall be under the authority of the Court, and the Court shall
10 retain jurisdiction for the purpose of entering orders providing for awards of
11 attorneys' fees and any expenses and implementing and enforcing the terms of this
12 Stipulation.

13 53. Unless ordered by a Court, no Party or counsel, consistent with Fed.
14 R. Evid. 408 and the mediation privilege, shall disseminate, refer to, or otherwise
15 distribute to any third party any information regarding the negotiation of the
16 Settlement between the Parties, or any information or documents they obtained
17 from one another in connection with the Settlement, except as necessary in
18 connection with this Stipulation or Court approval of the Settlement.

19 54. The waiver by one party of any breach of this Stipulation by any other
20 party shall not be deemed a waiver of any other prior or subsequent breach of this
21 Stipulation.

22 55. This Stipulation and its exhibits constitute the entire agreement among
23 the Parties hereto concerning the Settlement of the Litigation as against EY, and no
24 representations, warranties, or inducements have been made by any party hereto
25 concerning this Stipulation and its exhibits other than those contained and
26 memorialized in such documents.

1 56. The Order Re: Stipulation For Protective Order (Docket No. 307)
2 entered during the course of the Litigation relating to the confidentiality of
3 information shall survive the Stipulation.

4 57. Upon entry of the Preliminary Approval Order, the Parties agree to a
5 stand-down on all discovery, motions, pretrial disclosure obligations, and other
6 pending deadlines or matters in the Litigation.

7 58. Nothing in the Stipulation, or the negotiations relating thereto, is
8 intended to or shall be deemed to constitute a waiver of any applicable privilege or
9 immunity, including, without limitation, attorney-client privilege, joint defense
10 privilege, or work product protection.

11 59. This Stipulation may be executed in one or more counterparts. All
12 executed counterparts and each of them shall be deemed to be one and the same
13 instrument provided that counsel for the Parties to this Stipulation shall exchange
14 among themselves original signed counterparts. Signatures sent by facsimile or
15 pdf shall be deemed originals for the purposes of satisfying California or any other
16 rules of evidence.

17 60. This Stipulation shall be binding when signed, but the Settlement shall
18 be effective only on the condition that the Effective Date occurs.

19 61. This Stipulation shall be binding upon, and inure to the benefit of, the
20 successors and assigns of the Parties hereto.

21 62. The construction, interpretation, operation, effect and validity of this
22 Stipulation, and all documents necessary to effectuate it, shall be governed by the
23 internal laws of the State of California without regard to conflicts of laws, except
24 to the extent that federal law requires that federal law govern.

25 63. This Stipulation shall not be construed more strictly against one Party
26 than another merely by virtue of the fact that it, or any part of it, may have been
27 prepared by counsel for one of the Parties, it being recognized that it is the result of
28

1 arm's-length negotiations among the Parties, and all Parties have contributed
2 substantially and materially to the preparation of this Stipulation.

3 64. Class Counsel, on behalf of the Class Members, warrants and
4 represents that it is expressly authorized by Class Representative to take all
5 appropriate action required or permitted to be taken by the Class Members
6 pursuant to the Stipulation to effectuate its terms and also is expressly authorized
7 to enter into any modifications or amendments to the Stipulation on behalf of the
8 Class Members that it deems appropriate.

9 65. All counsel and any other person executing this Stipulation and any of
10 the exhibits hereto, or any related settlement documents, warrant and represent that
11 they have the full authority to do so, and that they have the authority to take
12 appropriate action required or permitted to be taken pursuant to the Stipulation to
13 effectuate its terms.

14 66. Class Counsel and Defendant's Counsel agree to cooperate fully with
15 one another in seeking Court approval of the Preliminary Approval Order, the
16 Stipulation and the Settlement, and to promptly agree upon and execute all such
17 other documentation as reasonably may be required to obtain final approval by the
18 Court of the Settlement.

19 67. Except as otherwise provided herein, each party shall bear its own
20 costs.

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IN WITNESS WHEREOF, the Parties hereto have caused this Stipulation to be executed, by their duly authorized attorneys, as of September 27, 2012.

LABATON SUCHAROW LLP

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