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10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12 SOUTHERN DIVISION

13 UNITED STATES OF AMERICA,) CASE NO. CR 08-139-CJC
14)
15 Plaintiff,) DEFENDANT WILLIAM J.
16) RUEHLE'S POSITION RE:
17 v.) DISCOVERY, MOTIONS, AND
18) TRIAL SCHEDULE;
19 HENRY T. NICHOLAS and) DECLARATION OF MATTHEW
20 WILLIAM J. RUEHLE,) D. UMHOFFER; EXHIBITS
21)
22 Defendants.)
23)
24) Proposed Trial Date:
25)
26) September 22, 2009
27)
28)

Defendant William J. Ruehle ("Mr. Ruehle"), by and through his counsel, hereby respectfully submits his position regarding scheduling in this matter in anticipation of the status conference on July 1, 2008. Counsel for Mr. Ruehle have engaged in discussions with the government on this matter, but have been unable to reach agreement with the government concerning scheduling.

1 **Order of Trials**

2 The threshold issue for scheduling purposes is the order in which cases
3 CR 08-139 (the options case) and CR 08-140 (the drug case) are tried. Our position
4 is that Mr. Ruehle will suffer substantial additional prejudice if the sensational drug
5 allegations concerning Dr. Henry T. Nicholas are tried in this Court and in the media
6 before the options case. Even if the allegations in the drug indictment are ultimately
7 disproved at trial, the prejudice from the airing of these allegations in a public trial
8 would prevent Mr. Ruehle from receiving a fair trial on the options dating issues.
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10 The government’s drug indictment is not a free-standing set of charges
11 – it is inextricably and expressly intertwined with Broadcom Corporation, and
12 therefore closely related both factually and legally to the options case and its
13 Broadcom-based charges. Broadcom appears in the very first paragraph of the drug
14 indictment, which states that Dr. Nicholas was a “co-founder of Broadcom” and
15 “served as Broadcom’s Chief Executive Officer and co-chairman of Broadcom’s
16 Board of Directors” from 1998 to 2003. (Drug Indictment, at ¶ 1). The drug
17 allegations fall within the very same time period as the options allegations: 1998 to
18 2003. Most problematically, the drug indictment is suffused with incendiary
19 allegations linking Broadcom to drug dealing and prostitution, including the
20 following assertions:
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- 22 • Individuals and associates of Broadcom’s CEO were “employed,
23 directed and caused . . . to obtain larger quantities of cash from
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1 financial accounts . . . for purchasing controlled substances.” (Drug
2 Indictment, at ¶4(d)).

- 3
- 4 • Prostitutes and drugs were provided to “representatives, and
- 5 associates of Broadcom.” (Id. at ¶4(f)).
- 6
- 7 • A Broadcom employee was directed to maintain a constant supply of
- 8 cash. (Id. at Overt Act No. 41).
- 9
- 10 • A drug deal took place on Broadcom’s premises involving an
- 11 unnamed Broadcom employee, a drug courier, and thousands of
- 12 dollars in cash. (Id. at Overt Act No. 49).
- 13
- 14 • A million-dollar settlement was paid out to a Broadcom employee
- 15 with knowledge of drug activities. (Id. at Overt Act No. 55-56).

16 The drug indictment thus paints a misleading picture of Broadcom as a
17 company awash in drugs, prostitutes, and cash, where criminal conduct was used as a
18 means of carrying on company business.¹ Not only is this portrayal fundamentally
19 incorrect, but it cannot help but stain and prejudice the chief financial officer of the
20 company at that time, Mr. Ruehle, and suggest – wrongly and unfairly – that he was
21 among the employees who engaged in the salacious and illegal conduct alleged in the
22 drug indictment. (At the very least, jurors may speculate as to how Mr. Ruehle, a
23 senior executive on Dr. Nicholas’s management team, could have been uninvolved in,
24 or unaware of, the activity charged against Dr. Nicholas in the drug indictment.) The
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28 ¹ Indeed, at the bail hearing in this matter, the prosecutor argued, “The defendant was, obviously, not in the business of making a living by dealing drugs. He was in the business of using drugs for his business [Broadcom].” Bail Hearing, RT 6/23/08: 63 (lines 8-10) (transcript filed under Docket No. 52).

1 allegations of “conspiracy” and “co-conspirator” conduct in the drug case inevitably
2 bleed over onto Mr. Ruehle, an alleged “co-conspirator” in the options case, a taint
3 that cannot be cured by *voir dire*. The matter is made all the worse by the fact that
4 the drug indictment repeatedly references “invoicing” for drugs, which connotes a
5 financial matter that the chief financial officer of the company might be expected to
6 know of and be involved in. (Drug Indictment, at Overt Acts 9, 12, 13, 19, 24, 27,
7 29, 30, 32, 33, 35, 48). The drug indictment thus lends itself to the inference –
8 however incorrect and unfortunate – that Mr. Ruehle was among the Broadcom
9 employees and co-conspirators who allegedly engaged in the criminal conduct
10 charged in the drug indictment.
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14 Were the drug and options cases typical criminal cases with limited
15 public attention, the prejudicial impact on Mr. Ruehle might be less significant. But
16 these are not typical criminal cases. These cases arise out of an extraordinarily
17 public set of facts that have been the subject of intense media scrutiny for more than
18 18 months, particularly in Orange County, Broadcom’s home. And in the media
19 frenzy surrounding the indictments, the drug case and the options case have been
20 conflated. Despite the fact that the drug indictment charges Dr. Nicholas with
21 conduct unrelated to the options case, media sources have repeatedly reported both
22 cases together and devoted the majority of their coverage to the salacious drug
23 allegations. (See, e.g., Newspaper Articles, attached hereto as Exhibit 1). In article
24 after article, media sources consistently lead with the drug allegations and discuss Mr.
25 Ruehle and the options investigation under headlines trumpeting the drug and
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1 prostitution allegations. (Id.). Thus, the government’s emphasis on Broadcom in the
2 drug indictment – and its decision to indict both cases simultaneously – has
3
4 inextricably linked the drug and options cases in the media, emphasizing the
5 problematic and prejudicial nexus created between the drug case and Mr. Ruehle.

6 In light of the government-generated linkages between the drug and
7 options allegations in the indictments and the media, there is little question that if the
8 drug trial were to proceed first, the jury pool in Orange County would be bombarded
9 with sensationalized daily media reports of the drug trial and its relationship with
10 Broadcom. Such publicity would inevitably and irreparably prejudice Mr. Ruehle
11 and his ability to obtain a fair trial on the only criminal charges pending against him
12 – the options charges.

13 The factors identified by the Ninth Circuit in considering the effects of
14 pre-trial publicity on criminal trials speak directly to the circumstances of this case.
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16 Daniels v. Woodford, 428 F.3d 1181, 1211 (9th Cir. 2005). First, a trial in the drug
17 case would certainly result in a “barrage of inflammatory publicity immediately prior
18 to trial” in the options case. Id. (quoting Ainsworth v. Calderon, 138 F.3d 787, 795
19 (9th Cir. 1998)). Second, the news accounts of the drug trial are bound to go well
20 beyond factual accounts and result in the kind of editorial and cartoon-style
21 commentary that inflames the public more than mere facts. Id. at 1211. Most
22 problematically, the media accounts of the drug trial will unquestionably contain
23 substantial amounts of inflammatory and prejudicial material that would not be
24 admissible in the trial of the options case. Id. There is simply no set of
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1 circumstances under which Mr. Ruehle could select an impartial jury and receive a
2 fair trial in the options case in the wake of a two-month-long trial and wall-to-wall
3 local and national media coverage of allegations of drug use, prostitution, and
4 general lawlessness at Broadcom.
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6 Justice and fairness therefore demand that the drug trial proceed *after*
7 the options case.
8

9 **Options Case Trial Schedule**

10 For the following reasons, Mr. Ruehle respectfully submits that a substantial
11 period of pre-trial preparation is warranted and necessary to ensure a fair trial for the
12 defendants; accordingly, we respectfully request that the trial be set no earlier than
13 September 22, 2009:
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- 15 1) This case was indicted on June 4, 2008. Mr. Ruehle made his initial appearance
16 on June 6, 2008, and post-indictment arraignment was held on June 16, 2008.
17 The case was assigned to this Court and a trial date of July 29, 2008 was set.
- 18 2) The government has been investigating the option granting practices at Broadcom
19 Corporation (“Broadcom”) for at least 18 months.
- 20 3) The scope of the government’s investigation is substantial: It appears to have
21 spanned **six years of activity** at Broadcom, **millions of documents**, and **scores of**
22 **witnesses**.
23
- 24 4) The investigation effectively began with a Special Committee investigation of
25 Broadcom’s stock option program in 2006, which lasted nearly four and a half
26 months. During that period, the Special Committee reviewed approximately six
27 million pages of information and interviewed over 40 current and former
28 Broadcom employees. The government has apparently had access to the work of

1 the Special Committee since the beginning of its investigation. Mr. Ruehle will
2 need access to these documents and witnesses, in addition to any other documents
3 that the government relied upon in their decision to charge defendants.

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5 5) The government has already conceded that this is a complex case that will take at
6 least 25 days for the prosecution to put on its case-in-chief. (See Notice of
7 Complex Case, filed June 4, 2008, Docket No. 7). Any defense case may take at
8 least as long, resulting in a total of 50 or more trial days. Assuming four-day trial
9 weeks, the trial in its entirety could last more than three months. Clearly, all the
10 parties will need a substantial amount of time to prepare for a trial of that length.

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12 6) The government's **65-page indictment** and its notice of complex case indicates
13 that this case will present complicated issues that will require extensive pre-trial
14 efforts to digest and make accessible to a jury. A few examples may help to
15 illustrate the complexity of the issues in this case and why they will require a
16 lengthy period of pre-trial preparation.

17 a) Broadcom restated 96 separate stock option grants in its January 2007

18 Restatement, and it will be necessary to re-evaluate the circumstances of each
19 of these grants in full. Each of these grants has its own set of facts,
20 circumstances, witnesses, and documents. The accounting for each grant may
21 raise numerous complex accounting issues. Consequently, it will be necessary
22 for the defense to retain experts to unravel the restatement process in order to
23 determine, among other things, how much of the restatement was directly
24 attributable to any alleged backdating.
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27 b) The indictment also turns on several complicated accounting opinions and
28 regulations that will pose unique challenges in the context of trial preparation
and jury presentation. Although the indictment omits mention of any specific

1 accounting policies, the defense will require substantial expert assistance
2 related to accounting principles, regulations and opinions concerning stock
3 options, including, but not limited to, generally accepted accounting principles
4 ("GAAP"), Accounting Principles Board Opinion No. 25 ("APB 25"),
5 Financial Accounting Standard 123, and Financial Accounting Standard 123R.
6 A substantial amount of time and effort will be required to assess these
7 complex accounting opinions and their application to stock options practices
8 in general, and Broadcom's stock options practices in particular, and to digest
9 these intricate issues and make them understandable to the jury.
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11 c) The advice given by Broadcom's external auditors, Ernst & Young ("EY"),
12 will be another complex and labor-intensive issue in this trial. Broadcom
13 recently filed an arbitration claim against EY regarding its advice relating to
14 the appropriate method of accounting for stock option grants, and the defense
15 will need to conduct a thorough investigation of the adequacy of EY's advice
16 to Broadcom concerning its stock options granting processes. Discovery
17 disputes that have already occurred in related civil litigation indicate that
18 efforts to procure information from EY may be protracted and litigation-
19 intensive.
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22 7) In light of the document-intensive nature of the case, the number of witnesses,
23 and the complex factual and legal issues involved in this matter, counsel for Mr.
24 Ruehle respectfully submits that a substantial period of pre-trial preparation is
25 necessary in order to ensure a fair trial for the defendants.
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27 8) A review of similarly complex criminal cases involving securities fraud
28 allegations at corporations indicates that such cases typically proceed to trial
approximately 15 months after the indictment is filed.

1 Accordingly, counsel for Mr. Ruehle propose the following dates for
2 discovery, motions, and the trial in this matter.

3 **Trial**

4 The trial in this matter shall commence on **September 22, 2009**.

5 **Discovery**

6 The government shall provide Brady materials forthwith. The government
7 shall provide all materials required to be produced under Rule 16 of the Federal
8 Rules of Criminal Procedure within one month of this date.

9 The date for pre-trial return of documents and objections requested pursuant to
10 subpoenas under Rule 17 of the Federal Rules of Criminal Procedure shall be **March**
11 **6, 2009**. Any motions concerning such subpoenas shall be filed no later than **March**
12 **20, 2009** (six months before trial). Any responses shall be filed within 21 days of the
13 filing of the motion. Any reply shall be filed within 14 days of the filing of the
14 response. A hearing on any such motion shall take place on **April 4, 2009**.

15 The government shall produce to the defendants all information and
16 documents required to be disclosed under the Jencks Act, 18 U.S.C. § 3500, no later
17 than **August 15, 2008**.

18 **Motions**

19 The defendants shall file any motion under Rule 12 of the Federal Rules of
20 Criminal Procedure no later than **October 13, 2008**. The government shall file its
21 response to any such motion within 21 days of the filing of the motion. Defendants
22 shall file any reply within 14 days of the filing of the response. A hearing on any
23 such motion shall be held on **November 24, 2008**.

24 The parties shall file any motion under Rule 16 or any other motion
25 concerning discovery (excepting expert and Jencks Act disclosures) no later than
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1 **January 16, 2009.** Any responses shall be filed within 21 days of the filing of the
2 motion. Any reply shall be filed within 14 days of the filing of the response. A
3 hearing on any such motion shall take place on **March 2, 2009.**

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5 The defendants shall file any motion under Rule 14 of the Federal Rules of
6 Criminal Procedure (re: joinder and severance) no later than **March 20, 2009** (six
7 months before trial). Any responses shall be filed within 21 days of the filing of the
8 motion. Any reply shall be filed within 14 days of the filing of the response. A
9 hearing on any such motion shall take place on **May 4, 2009.**

10 The parties shall file any pre-trial motions *in limine* no later than **June 26,**
11 **2009** (approximately 90 days prior to trial). Any responses shall be filed within 21
12 days of the filing of the motion. Any reply shall be filed within 14 days of the filing
13 of the response. A hearing on any motions *in limine* shall be held on **August 10,**
14 **2009.**

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16 **Trial Documents**

17 The government shall file its witness list and exhibit list no later than **July 24,**
18 **2009** (60 days before trial).

19 The parties shall file any proposed *voir dire* questions or jury questionnaire no
20 later than **July 24, 2009** (60 days before trial).
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1 The parties shall file joint proposed jury instructions and a joint proposed
2 verdict form no later than **August 24, 2009** (30 days before trial).

3 Respectfully submitted:
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6 Dated: June 30, 2008

/s/ Richard Marmaro

RICHARD MARMARO
Attorney for Defendant
William J. Ruehle

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