

ELECTRONICALLY FILED BY
Superior Court of California,
County of Monterey
On 1/29/2018 12:15 PM
By: William Grasty, Deputy

1 BRODSKY & SMITH, LLC
Evan J. Smith (SBN: 242352)
2 9595 Wilshire Boulevard, Suite 900
3 Beverly Hills, CA 90212
Telephone: 877.534.2590
4 Facsimile: 310.247.0160

5 Attorneys for Plaintiff
6 [Additional Counsel on Signature Page]

7
8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN THE COUNTY OF MONTEREY**

10
11 PAUL BERGER, on Behalf of Himself
12 and All Others Similarly Situated,

13 Plaintiff,

14 v.

15 CAVIUM, INC., SYED B. ALI, BRAD
16 W. RUSS, EDWARD H. FRANK, Ph.D.,
17 SANJAY MEHROTRA, MADHAV
RAJAN, and ANTHONY THORNLEY,

18 Defendants.

CASE NO. 18CV000376

CLASS ACTION

**COMPLAINT FOR BREACH OF
FIDUCIARY DUTY AND FAILURE TO
DISCLOSE**

JURY TRIAL DEMANDED

19
20
21
22
23
24
25
26
27
28

1 Plaintiff Paul Berger, as and for his Class Action Complaint, alleges upon personal
2 knowledge as to himself and its own acts, and upon information and belief derived from, *inter*
3 *alia*, a review of documents filed with the Securities and Exchange Commission (“SEC”) and
4 publicly available news sources, such as newspaper articles, as to all other matters, as follows:

5 **NATURE OF THE ACTION**

6 1. This is a shareholder class action (the “Action”) on behalf of Plaintiff and the
7 other public stockholders of Cavium, Inc. (“Cavium” or the “Company”) common stock against
8 Cavium and the members of its board of directors (the “Board” or the “Individual Defendants”).
9 The Action arises from Defendants’ actions in causing Cavium to agree to be sold to Bermuda-
10 governed Marvell Technology Group Ltd. (“Marvell”) in a transaction which protects and
11 advances the interests of all of Cavium’s directors at the expense of Cavium’s public
12 shareholders (the “Sale Agreement”). Not only have Defendants publicly admitted that all Board
13 members have economic interests in the Sale Agreement that are different from, or in addition to,
14 those of Cavium shareholders generally, but Defendants have also allowed the Company’s
15 Chairman and Chief Executive Officer (“CEO”), Mr. Syed B. Ali, to single-handedly negotiate
16 the terms of the Sale Agreement, notwithstanding that he stands to receive an approximately \$97
17 million payout which monies he would not otherwise receive at this time absent a sale of the
18 Company. Because of their conflicts of interest, the Company’s directors were unable to fairly
19 evaluate the Sale Agreement to ensure that it is in the best interest of Plaintiff and Cavium’s
20 other public shareholders.

21 2. The Sale Agreement is to the detriment of Plaintiff and Cavium’s other public
22 shareholders because it deprives them of over \$1.8 billion in value in addition to other valuable
23 legal rights. In this regard, in connection with the Sale Agreement, Cavium shareholders are
24 being paid a combination of Marvell’s stock and cash valued at approximately \$80 in the
25 aggregate, which is \$27 less than the \$107 per share price that Qatalyst Partners, LP (“Qatalyst”),
26 Cavium’s own investment banker, found to be an adequate value of the Company as a standalone
27 entity using the judicially-preferred discounted cash flow valuation method. By this measure,
28 the Sale Agreement will deprive Cavium’s shareholders of over \$1.8 billion. Additionally, as a

1 Company incorporated in Bermuda, Marvell has different obligations toward shareholders and
2 defendants have publicly admitted that there is significant doubt as to whether the courts of
3 Bermuda would recognize or enforce judgments of United States courts.”

4 3. The Action also challenges Defendants’ efforts to conceal material information
5 from Plaintiff and Cavium’s other public shareholders in the proxy statement (the “Proxy
6 Statement”) that Cavium’s directors have caused to be filed with the SEC and distributed to
7 Plaintiff and Cavium’s other shareholders in conjunction with soliciting their votes on the Sale
8 Agreement, including information regarding (a) the conflicts of interest of Cavium’s directors,
9 (b) the conflicts of interest of Cavium’s financial advisor, Qatalyst, whose opinion - that the
10 price being paid for Cavium is fair (the “Fairness Opinion”) - is touted in the Proxy Statement
11 and was relied upon by the Individual Defendants in recommending that shareholders vote in
12 favor of the Sale Agreement, and (c) the sale process leading to the Sale Agreement, including
13 the Individual Defendants’ efforts to maximize value for Cavium’s shareholders.

14 JURISDICTION

15 4. This Court has jurisdiction over the subject matter of this action pursuant to the
16 California Constitution, Article VI, Section 10, because this case is an action not given by statute
17 to other trial courts.

18 5. This Court has jurisdiction over the Defendants in this action because Cavium is a
19 corporation headquartered in this state and because the improper conduct alleged in this
20 Complaint occurred in and/or was directed at this state. Additionally, this Court has jurisdiction
21 over each of the Defendants because their wrongful conduct challenged in this Complaint was
22 directed at, and intended to have its primary effect in, this state.

23 6. Venue lies in this Court because defendant Anthony Thornley is a resident of
24 Monterey County.

25 7. This action arises under Delaware substantive law and challenges the internal
26 affairs or governance of Cavium and hence is not removable to Federal Court under the Class
27 Action Fairness Act of 2005 or the Securities Litigation Uniform Standards Act (“SLUSA”), 15
28

1 U.S.C. § 78bb(f).

2 **THE PARTIES**

3 8. Plaintiff Paul Berger has owned shares of Cavium at all relevant times.

4
5 9. Defendant Syed B. Ali (“Mr. Ali” or “CEO Ali”), one of the Company’s co-
6 founders, has served as President, CEO, and Chairman of the board of directors since the
7 inception of Cavium in 2000. In connection with the consummation of the Sale Agreement, CEO
8 Ali (i) is expected to join Marvell’s board of directors and will serve as a strategic advisor of the
9 combined company, (ii) is entitled to an approximately \$97 million payout, which consists of \$69
10 million for his Cavium shares and over \$28 million from the accelerated vesting of his Cavium
11 unvested options, Restricted Stock Unit’s (“RSUs”) and Performance RSUs (“PRSUs”), (iii) is
12 entitled to receive a cash payment of \$250,000 as a retention bonus, and (iv) is entitled to receive
13 a right to indemnification for all acts and/or omissions occurring prior to consummation of the
14 Sale Agreement. This Court has jurisdiction over CEO Ali because he is a resident of California,
15 Cavium is headquartered in California, and because CEO Ali’s actions challenged in this
16 Complaint occurred in substantial part, were directed at, and/or were meant to have their primary
17 effect in California.

18 10. Defendant Brad W. Russ (“Mr. Russ”) has served as a director of Cavium since
19 July 2016. In connection with consummation of the Sale Agreement, Mr. Russ is entitled to
20 receive (i) a cash payment of \$152,124 plus 8,274 shares of Marvel common stock, valued at
21 approximately \$165,480, from the accelerated vesting of his unvested RSUs and (ii) a right to
22 indemnification for all acts and/or omissions occurring prior to consummation of the Sale
23 Agreement. This Court has jurisdiction over Mr. Russ because the Company is headquartered in
24 this state and because Mr. Russ’ actions challenged in this Complaint occurred in substantial part,
25 were directed at, and/or were meant to have their primary effect in this state.

26 11. Defendant Edward H. Frank, Ph.D (“Dr. Frank”) has served as a director of
27 Cavium since July 2016. In connection with consummation of the Sale Agreement, Dr. Frank is
28

1 entitled to receive (i) a cash payment of \$152,124 plus 8,274 shares of Marvel common stock,
2 valued at over \$190,000, from the accelerated vesting of his unvested RSUs and (ii) a right to
3 indemnification for all acts and/or omissions occurring prior to consummation of the Sale
4 Agreement. This Court has jurisdiction over Dr. Frank because the Company is headquartered in
5 this state and because Dr. Frank's actions challenged in this Complaint occurred in substantial
6 part, were directed at, and/or were meant to have their primary effect in this state.

7 12. Defendant Sanjay Mehrotra ("Mr. Mehrotra") has served as a director of Cavium
8 since July 2009. In connection with consummation of the Sale Agreement, Mr. Mehrotra is
9 entitled to receive (i) a cash payment of an undisclosed amount for the accelerated vesting of his
10 unvested Director Options, (ii) a cash payment of \$152,124 plus 8,274 shares of Marvel common
11 stock, valued at over \$190,000, from the accelerated vesting of his unvested RSUs, and (iii) a
12 right to indemnification for all acts and/or omissions occurring prior to consummation of the Sale
13 Agreement. This Court has jurisdiction over Mr. Mehrotra because the Company is
14 headquartered in this state and because Mr. Mehrotra's actions challenged in this Complaint
15 occurred in substantial part, were directed at, and/or were meant to have their primary effect in
16 this state.

17 13. Defendant Madhav Rajan ("Mr. Rajan") has served as a director of Cavium since
18 March 2013. In connection with consummation of the Sale Agreement, Mr. Rajan is entitled to
19 receive (i) a cash payment of an undisclosed amount for the accelerated vesting of his unvested
20 Director Options, (ii) a cash payment of \$152,124 plus 8,274 shares of Marvel common stock,
21 valued at over \$190,000, from the accelerated vesting of his unvested RSUs, and (iii) a right to
22 indemnification for all acts and/or omissions occurring prior to consummation of the Sale
23 Agreement. This Court has jurisdiction over Mr. Rajan because the Company is headquartered
24 in this state and because Mr. Rajan's actions challenged in this Complaint occurred in substantial
25 part, were directed at, and/or were meant to have their primary effect in this state.

26 14. Defendant Anthony S. Thornley ("Mr. Thornley"), a resident of Carmel,
27 California, has served as a director of Cavium since September 2006 and has served as the
28

1 Company's lead independent director since June 2012. In connection with consummation of the
2 Sale Agreement, Mr. Thornley is entitled to receive (i) a cash payment of an undisclosed amount
3 for the accelerated vesting of his unvested Director Options, (ii) a cash payment of \$152,124 plus
4 8,274 shares of Marvel common stock, valued at over \$190,000, from the accelerated vesting of
5 his unvested RSUs, and (iii) a right to indemnification for all acts and/or omissions occurring
6 prior to consummation of the Sale Agreement. This Court has jurisdiction over Mr. Thornley
7 because the Company is headquartered in this state and because Mr. Thornley's actions
8 challenged in this Complaint occurred in substantial part, were directed at, and/or were meant to
9 have their primary effect in this state.

10 15. Defendant Cavium, Inc., a publicly traded corporation headquartered in
11 California, provides highly integrated semiconductor processors that enable intelligent
12 processing for wired and wireless infrastructure and cloud for networking, communications,
13 storage, and security applications. Cavium's principal offices are located at 2315 N. First Street,
14 San Jose, California 95131. Cavium's common stock trades under the symbol "CAVM" on the
15 NASDAQ. This Court has jurisdiction over Cavium because the Company is headquartered in
16 California and because the conduct alleged in this Action occurred in, was directed at, and/or
17 was intended to have its primary effect in California.

18 **THE INDIVIDUAL DEFENDANTS' FIDUCIARY DUTIES**

19
20 16. Under applicable Delaware statutory and common law, the directors of a publicly
21 held company such as Cavium have fiduciary duties of care, loyalty, disclosure, good faith and
22 fair dealing and are liable to shareholders for breaches thereof. They are required to (i) use their
23 ability to control and manage Cavium in a fair, just and equitable manner; (ii) act in furtherance
24 of the best interests of Cavium and its shareholders; (iii) act to maximize shareholder value in
25 connection with any change in ownership and control; (iv) govern Cavium in such a manner as to
26 heed the expressed views of its public shareholders; (v) refrain from abusing their positions of
27 control; and (vi) not to favor their own interests or Marvell's interests at the expense of Cavium
28 and its public shareholders. Where it appears that a director has obtained any personal benefit

1 from dealing with the corporation, and the transaction is drawn into question as between him and
2 the stockholders of the corporation, the burden is upon the director or officer to show that the
3 transaction has been fair, open and in the utmost good faith.

4 17. As alleged in detail below, Defendants have breached, and/or aided other
5 Defendants' breaches of, their fiduciary duties to Cavium's public shareholders by acting to
6 cause or facilitate the Sale Agreement because the Sale Agreement is not in the best interests of
7 those shareholders, but is in the best interests of the Individual Defendants who will receive
8 significant personal benefits as a result of the Sale Agreement.

9 18. Because Defendants have knowingly or recklessly breached their fiduciary duties
10 in connection with the Sale Agreement, and/or are personally profiting from the same, the burden
11 of proving the inherent or entire fairness of the Sale Agreement, including all aspects of its
12 negotiation, structure, and terms, is borne by Defendants as a matter of law.

13 19. Further, as alleged in detail *infra*, the Individual Defendants have breached their
14 fiduciary duty of disclosure in that on December 21, 2017, the Individual Defendants caused the
15 Proxy Statement to be filed with the SEC and mailed to Plaintiff and Cavium's other public
16 shareholders, but concealed therein certain material information which a reasonable shareholder
17 would find material in determining whether to vote in favor of the sale of the Company. Among
18 other things, the Defendants have failed to disclose material information regarding (i) conflicts of
19 interest of Cavium's directors, (ii) the conflicts of interest of the Company's financial advisers,
20 Qatalyst (hired to issue an opinion on the fairness of the consideration to be paid for the
21 Company), (iii) the sale process, and (iv) the criteria used by the Company's board and advisors
22 in selecting alternative strategic parties.

23 **CLASS ACTION ALLEGATIONS**

24 20. Plaintiff brings this action as a class action pursuant to California Code of Civil
25 Procedure § 382 on behalf of himself and all other shareholders of the Company who are or will
26 be threatened with injury arising from Defendants' actions, as more fully described herein (the
27 "Class"). Excluded from the Class are (i) the Defendants herein and their Related Persons (as
28 defined by SEC rules), (ii) any holders of 5% or more, in the aggregate, of Cavium's stock and

1 their Related Persons (as defined by SEC rules) and (iii) Sean Griffith and any other shareholder
2 who purchased his, her or its shares solely for the purpose of objecting to any potential
3 settlement of this action.

4 21. The members of the Class are so numerous that joinder of all of them would be
5 impracticable. While the exact number of Class members is unknown to Plaintiff, and can be
6 ascertained only through appropriate discovery, Plaintiff believes there are many hundreds, if not
7 thousands, of Class members. As of January 10, 2018 Cavium had over 69.16 million shares of
8 common stock outstanding.

9 22. Plaintiff's claims are typical of the claims of the Class since Plaintiff and the other
10 members of the Class have and will sustain harm arising out of Defendants' breaches of their
11 fiduciary duties. Plaintiff does not have any interests that are adverse or antagonistic to those of
12 the Class. Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff is
13 committed to the vigorous prosecution of this action and has retained counsel competent and
14 experienced in this type of litigation.

15 23. There are questions of law and fact common to the members of the Class that
16 predominate over any questions which, if they exist, may affect individual Class members. The
17 predominant questions of law and fact include, among others, whether:

18 a. the Defendants have breached and are breaching their fiduciary duties to
19 the detriment of Cavium shareholders;

20 b. Plaintiff and the Class are entitled to an injunction and other equitable
21 relief; and

22 c. Plaintiff and the Class have been damaged and the extent to which they
23 have sustained damages, and what is the proper measure of those damages.

24 24. A class action is superior to all other available methods for the fair and efficient
25 adjudication of this controversy since joinder of all members is impracticable. Further, as
26 individual damages may be relatively small for most members of the Class, the burden and
27 expense of prosecuting litigation of this nature makes it unlikely that members of the Class
28 would prosecute individual actions. Plaintiff anticipates no difficulty in the management of this

1 action as a class action. Further, the prosecution of separate actions by individual members of
2 the Class would create a risk of inconsistent or varying results, which may establish incompatible
3 standards of conduct for Defendants.

4 SUBSTANTIVE ALLEGATIONS

5 A. The Sale Agreement will Benefit Cavium's CEO and the Board to the Detriment of 6 the Company's Shareholders

7 25. On November 20, 2017, following an inadequate sale process, the Individual
8 Defendants caused the Company to announce that Cavium and Marvell had entered into the Sale
9 Agreement. Pursuant to the Sale Agreement, Marvell will acquire Cavium for \$40.00 in cash
10 and 2.1757 of a Marvell common share for each share of Cavium common stock, representing a
11 purchase price of \$80 per share at the time the deal was announced. This sale price significantly
12 undervalues Cavium as it is \$27 less than the \$107 per share price that Qatalyst Partners, LP
13 ("Qatalyst"), Cavium's own investment banker, found to be an adequate value of the Company
14 as a standalone entity using the judicially-preferred discounted cash flow valuation method. By
15 this measure, the Sale Agreement will deprive Cavium's shareholders of over \$1.8 billion.

16 26. Cavium is a strong company with the potential for greater growth. The decision
17 by Cavium's directors to sell the Company is inopportune given that the Company's business is
18 sequentially growing and Cavium is poised to thrive as a standalone Company. In this regard,
19 over the past two years, Cavium has continued to sequentially increase its net revenue. In this
20 regard, in a press release dated April 26, 2017, Cavium announced its financial results for the
21 first quarter of 2017: "Net revenue in the first quarter of 2017 was \$229.6 million, a 1.5%
22 sequential increase from the \$226.2 million reported in the fourth quarter of 2016 and an increase
23 of **125.3% from the \$101.9 million reported in the first quarter of 2016.**" (emphasis added).

24 27. Further, in a press release dated August 2, 2017, Cavium announced its financial
25 results for the second quarter of 2017: "Net revenue in the second quarter of 2017 was \$242.1
26 million, **a 5.5% sequential increase** from the \$229.6 million reported in the first quarter of 2017
27 and an increase of **125.9% from the \$107.2 million reported in the second quarter of 2016.**"
28 (emphasis added).

1 28. Additionally, in a press release dated November 1, 2017, Cavium announced its
2 financial results for the third quarter of 2017: “Net revenue in the third quarter of 2017 was
3 \$252.0 million, *a 4.1% sequential increase* from the \$242.1 million reported in the second
4 quarter of 2017 and an increase of *49.9% from the \$168.1 million reported in the third quarter*
5 *of 2016.*” (emphasis added).

6 29. The Company anticipates its impressive financial performance to continue if the
7 Company remains as an independent, standalone Company. In fact, the Company’s internal
8 financial forecast summary predicts nearly a 235% increase in revenue by the year 2027.

9 30. The process leading to the Sale Agreement was wholly inadequate. In this regard,
10 CEO Ali, motivated by an almost \$97 million payout plus continued employment by Marvell as
11 a strategic advisor and member of the Board following consummation of the Sale, quarterbacked
12 the entire sale process. CEO Ali was the only Cavium director, executive, and employee who
13 was in direct contact with Marvell and Matthew Murphy (“Mr. Murphy”), President and CEO of
14 Marvell, engaging in negotiations. Further, even though CEO Ali was made aware that he would
15 be given a seat on Marvell’s board early on in the transaction, Cavium’s Board never sought to
16 create a disinterested and independent committee to negotiate the sale of the Company.

17 31. Driven by CEO Ali, who favored Marvell as a result of the benefits that would
18 accrue to him only if the Company were sold to Marvell, the sale process was a lackluster one
19 designed to be unsuccessful. In this regard, the Company only reached out to four potential
20 buyers, other than Marvell, all of whom indicated that they were uninterested in a transaction
21 with Cavium because of regulatory concerns. The defendants have failed to disclose their
22 rationale for selecting these four bidders and for failing to engage in a more robust sale process.

23 32. Notwithstanding their failure to adequately explore the universe of potential
24 buyers for the Company, CEO Ali and the other Individual Defendants effectively locked up the
25 Sale and deterred other buyers by granting Marvell exclusivity. For example, on November 8,
26 2017, a company identified as Party F contacted CEO Ali regarding a potential business
27 combination. CEO Ali did not respond to Party F, who may have offered Cavium’s shareholders
28 more value, due to the restrictions of the exclusivity agreement.

1 33. Further compounding the inadequate process, Cavium's shareholders' rights will
2 be significantly diminished following consummation of the Sale Agreement because they will be
3 governed by the laws of Bermuda where Marvell is incorporated and Defendants have admitted
4 "there is significant doubt as to whether the courts of Bermuda would recognize or enforce
5 judgments of United States courts obtained against Marvell or Marvell's directors or officers."
6 Further, following the consummation of the Sale, Cavium's shareholders will be severely limited
7 under the combined company's By-laws which force shareholders to waive any claim or right
8 that they would otherwise have, excluding fraud.

9 34. The other members of Cavium's board were motivated to abandon their
10 responsibility to Plaintiff and other Cavium shareholders because, as described at paragraphs 10-
11 14 *supra*, each will receive hundreds of thousands of dollars in connection with the
12 consummation of the Sale Agreement, which value they would not receive at this time absent the
13 sale of the Company to Marvell. Additionally two members of Cavium's board (whose identities
14 have not been disclosed) will join Cavium's board (in addition to CEO Ali) following
15 consummation of the Sale Agreement.

16 **B. As a result of the Conflicts on Interest, JP Morgan and Qatalyst were Unable to**
17 **Render an Impartial Fairness Opinion**

18 35. Cavium's directors have publicly admitted that their rationale for entering into the
19 Sale Agreement included the respective fairness opinions of J.P. Morgan Securities, LLC ("JP
20 Morgan") and Qatalyst that the consideration to be paid to the Company's shareholders in
21 connection with the Sale is fair. However, the Defendants foisted conflicts upon JP Morgan and
22 Qatalyst to ensure they render favorable fairness opinions that support the Sale by ensuring that
23 the substantial majority of their fees are contingent upon consummation of the transaction. In
24 this regard, JP Morgan will be paid \$25 million only if the Sale Agreement is consummated and
25 only \$3.5 million if it is not. Similarly, Qatalyst will be paid approximately \$38 million only if
26 the Sale Agreement is consummated and only \$3.5 million if it is not. Consequently, both JP
27 Morgan and Qatalyst were motivated to ensure that the Sale Agreement is executed.
28

1 **C. The Materially Misleading and/or Incomplete Proxy Statement**

2 36. Additionally, the Individual Defendants are breaching their fiduciary duties of full
3 disclosure to Plaintiff and Cavium's other public shareholders in connection with the Sale
4 Agreement. In this regard, in connection with soliciting shareholders' vote on the Sale
5 Agreement, the Individual Defendants caused the Company to file the Proxy Statement with the
6 SEC and made it available *via* the SEC website to Plaintiff and Cavium's other public
7 shareholders. However, the Proxy Statement is deficient in that it misrepresents and/or omits,
8 *inter alia*, material information as set forth below:

- 9 a. According to public sources, Cavium's Co-founder and Chief Executive
10 Officer, Syed Ali, will continue with the combined company as a strategic
11 advisor and will join Marvell's Board of Directors, along with two
12 additional board members from Cavium's Board of Directors, effective
13 upon closing of the transaction. The Proxy Statement is deficient because
14 it fails to disclose (i) when Mr. Ali first became aware that Marvell wished
15 for him to continue as a strategic advisor and member of the Board, (ii) the
16 compensation that will be payable to Mr. Ali for serving in those capacities
17 and the substance of all discussions had relating to such compensation, and
18 (iii) the identities of the two additional Cavium board members who will
19 join Marvell's Board and the criteria used to select them.

Information regarding the conflicts of interest of the Company's directors
is material and must be disclosed.

- 16 b. According to the Proxy Statement, each outstanding and vested Cavium
17 option held by a non-employee member of Cavium's board of directors
18 who will not serve on Marvell's board of directors, including those
19 Director Options that become vested by the Sale Agreement, will be
20 cancelled and the director will be entitled to a cash payment. The Proxy is
21 deficient because it fails to disclose the cash payments payable to each
22 non-employee member of Cavium's Board for his unvested options.

Information regarding conflicts of interest of the Company's directors is
material and must be disclosed.

- 22 c. According to the Proxy Statement, Qatalyst, who provided a fairness
23 opinion used by the Individual Defendants as part of their rationale for
24 entering into the Sale Agreement, or its affiliates, may at any time hold
25 long or short positions, and may trade or otherwise effect transactions in
26 debt or equity securities or loans of Marvell or certain of its affiliates. The
27 Proxy is deficient because it fails to disclose the value of any such
28 positions held by Qatalyst and/or its affiliates.

Information regarding the conflicts of interest of the Company's financial
advisor is material and must be disclosed.

- d. According to the Proxy Statement, the Company's Board authorized and
directed Cavium's management and representatives of JP Morgan and

1 Qatalyst to contact other strategic parties who might be interested in a
2 business combination with the Company. The Proxy is deficient because
3 it fails to disclose (i) the criteria used to select the strategic parties, (ii)
4 who identified and selected the strategic parties, (iii) the number of
5 strategic parties that were considered and/or discussed by the Board and/or
6 its advisors, and (iv) the substance of the discussion had with each
7 strategic party, including substance of any transaction terms discussed.

8 This information is material for Cavium's shareholders to determine the
9 extent to which the Individual Defendants complied with their fiduciary
10 duties to them, including their duty to maximize the value of the sale of
11 the Company for shareholders, particularly since Defendants claim that all
12 of the other strategic parties declined to enter negotiations citing
13 regulatory concerns.

14 **COUNT I**

15 **Breach of Fiduciary Duties of Care, Good Faith and Loyalty**
16 **(Against the Individual Defendants)**

17 37. Plaintiff repeats and realleges all previous allegations as if set forth in full herein.

18 38. By reason of the foregoing, the Individual Defendants have breached their
19 fiduciary duties of, *inter alia*, care, good faith, and loyalty they owe to Plaintiff and the other
20 shareholders of Cavium.

21 39. As a result, Plaintiff and the Class have been and will be damaged.

22 **COUNT II**

23 **Breach of Fiduciary Duty of Disclosure**
24 **(Against Cavium and the Individual Defendants)**

25 40. Plaintiff repeats all previous allegations as if set forth in full herein.

26 41. Under applicable law, the fiduciary duties of Cavium and the Individual
27 Defendants require them to fairly disclose to Plaintiff and the Class all information material to
28 the decisions confronting Cavium's public shareholders with regard to their vote on the Sale
Agreement.

42. As set forth above, Cavium and the Individual Defendants have breached their
fiduciary duties through materially inadequate disclosures and material omissions.