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7 BROCADE COMMUNICATIONS SYSTEMS, INC. AND
FOUNDRY NETWORKS, LLC

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

12 BROCADE COMMUNICATIONS
SYSTEMS, INC., a Delaware corporation,
13 and FOUNDRY NETWORKS, LLC, a
Delaware limited liability company,

14 Plaintiffs,

15 v.

16 A10 NETWORKS, INC., a California
17 corporation, LEE CHEN, an individual,
RAJKUMAR JALAN, an individual, RON
18 SZETO, an individual, LIANG HAN, an
individual, STEVEN HWANG, an individual,
19 and DAVID CHEUNG, an individual,

20 Defendants.

Case No. 5:10-cv-03428-LHK

**THIRD AMENDED COMPLAINT
FOR PATENT INFRINGEMENT,
COPYRIGHT INFRINGEMENT,
TRADE SECRET
MISAPPROPRIATION, BREACH OF
CONTRACT, BREACH OF
FIDUCIARY DUTY, BREACH OF
THE DUTY OF LOYALTY,
INTERFERENCE WITH
PROSPECTIVE ECONOMIC
ADVANTAGE, INTERFERENCE
WITH CONTRACT, AND UNFAIR
COMPETITION UNDER CAL. BUS.
& PROF. CODE §§ 17200 *et seq.***

DEMAND FOR JURY TRIAL

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1 Plaintiff Brocade Communications Systems, Inc. (“Brocade”) and Foundry Networks,
2 LLC (“Foundry”) (together, “Plaintiffs”) allege as follows:

3 1. Plaintiffs bring this action against defendants A10 Networks, Inc. (“A10”), Lee
4 Chen, Rajkumar Jalan, Ron Szeto, Liang Han, Steve Hwang, and David Cheung (collectively,
5 “the Defendants”) for patent infringement, copyright infringement, trade secret misappropriation,
6 breach of contract, breach of fiduciary duty, breach of the duty of loyalty, interference with
7 prospective economic advantage, interference with contract, and unfair competition under
8 California Business & Professions Code §§ 17200 *et seq.* This is an action for damages and
9 injunctive relief arising out of the Defendants’ clandestine and systematic theft and infringement
10 of Plaintiffs’ most valuable proprietary information in application delivery technology. The theft
11 and wrongful conduct described herein was completely unknown to Plaintiffs until recently. As
12 Plaintiffs have discovered in the past year, A10 is an entity composed primarily of Plaintiffs’
13 former employees who have unlawfully exploited Plaintiffs’ intellectual property.

14 **THE PARTIES**

15 2. Plaintiff Brocade is a Delaware corporation with its principal place of business at
16 130 Holger Way, San Jose, California.

17 3. Plaintiff Foundry is a Delaware limited liability company and was previously
18 named Foundry Networks, Inc. Foundry is a wholly owned subsidiary of Brocade. Brocade
19 acquired Foundry in December 2008, and thereafter has sold and further developed the former
20 Foundry products.

21 4. Defendant A10 is a California corporation with its principal place of business at
22 2309 Bering Drive, San Jose, California.

23 5. Defendant Lee Chen is a former founder, executive officer, and employee of
24 Foundry and, on information and belief, is the founder and Chief Executive Officer of A10. Chen
25 resides in Saratoga, California.

26 6. Defendant Rajkumar Jalan is a former Foundry employee and, on information and
27 belief, is the Chief Technology Officer of A10. Jalan resides in Saratoga, California.

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1 7. Defendant Ron Szeto is a former Foundry employee. Szeto resides in Pleasanton,
2 California.

3 8. Defendant Liang Han is a former Foundry employee. Han resides in Mountain
4 View, California.

5 9. Defendant Steve Hwang is a former Foundry employee. Hwang resides in San
6 Jose, California.

7 10. Defendant David Cheung is a former Foundry and Brocade employee. Cheung
8 resides in Cupertino, California.

9 **JURISDICTION AND VENUE**

10 11. This Court has subject matter jurisdiction over this action pursuant to, *inter alia*,
11 28 U.S.C. §§ 1331, 1338(a) and (b), 1367, the Patent Act, 35 U.S.C. § 1 *et seq.*, and the
12 Copyright Act, 17 U.S.C. §§ 101, *et seq.*

13 12. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because, *inter alia*,
14 a substantial part of the events and omissions giving rise to the claims occurred here and the
15 Defendants reside in this district and are subject to personal jurisdiction in this district. Division
16 assignment to the San Jose Division of the United States District Court for the Northern District
17 of California is proper pursuant to Civil Local Rule 3-2(e) because this is an Intellectual Property
18 Action that arose in, among other places, Santa Clara County.

19 **FACTUAL ALLEGATIONS**

20 **A. Brocade, Foundry And The Layer 4-7 Proprietary Technology.**

21 13. Brocade is an industry leader in providing innovative, high-performance, and
22 reliable networking solutions. The United States Patent and Trademark Office has acknowledged
23 Brocade's innovative leadership in this field by awarding to Brocade nearly 100 patents in the
24 United States alone.

25 14. Prior to Brocade's acquisition of Foundry, Foundry was an industry leader in the
26 design, manufacture, and sale of networking solutions, including application delivery systems
27 (also referred to as "Layer 4-7" systems), and also was awarded numerous U.S. patents. After the
28 acquisition, Foundry's employees (including Defendant Cheung) became Brocade employees,

1 and Brocade began selling and further developing the former Foundry products, including the
2 Layer 4-7 systems, such as the ServerIron and ADX product lines.

3 15. Foundry and now Brocade are leading innovators in application delivery systems,
4 including server load balancers and other networking technology intended to optimize Internet
5 performance and reliability. The technology at issue may be used, for example, to optimize
6 network traffic between the Internet and a group of web servers. Application delivery technology
7 has been and is a fundamental part of Plaintiffs' ServerIron and ADX products.

8 16. The U.S. Patent and Trademark Office awarded Foundry numerous patents (later
9 assigned to Brocade) for its Layer 4-7 technology and other networking technology. Among
10 them are U.S. Patent Nos. 7,558,195 ("the '195 Patent"), 7,581,009 ("the '009 Patent"),
11 7,454,500 ("the '500 Patent"), 7,574,508 ("the '508 Patent"), 7,647,427 ("the '427 Patent"),
12 7,657,629 ("the '629 Patent"), 7,584,301 ("the '301 Patent"), 7,716,370 ("the '370 Patent"),
13 7,720,977 ("the '977 Patent"), 7,774,833 (the '833 Patent"), 7,756,965 ("the '965 Patent"),
14 7,899,899 ("the '899 Patent"), and 7,840,678 (the '678 Patent") (collectively, "the Patents-in-
15 suit").

16 17. Plaintiffs' ServerIron and ADX products consist of hardware and software
17 components. Plaintiffs' software components, including software for Plaintiffs' BigIron switch
18 and ServerIron switch product lines, sometimes called "BigIron software" and "ServerIron
19 software" herein, contain a substantial amount of material that was developed solely by Plaintiffs
20 and that is copyrightable subject matter under the laws of the United States as reflected in the
21 Certificates of Registration issued by the U.S. Copyright Office for numerous releases of the
22 BigIron software and ServerIron software (hereinafter collectively, the "Copyrighted Works").
23 Since as early as 1996, and until the events described herein, the Copyrighted Works have been
24 under Plaintiffs' exclusive control and Plaintiffs have been the sole proprietors of all rights, title,
25 and interest in and to the Copyrighted Works.

26 18. Plaintiffs have invested millions of dollars and enormous amounts of time into the
27 research, development, design and refinement of their products, including the ServerIron and
28 ADX products. Such investment is necessary to design the sophisticated processes and

1 equipment that will satisfy the high standards of performance and reliability required by
2 Plaintiffs' customers.

3 19. Through the substantial investment of time and money, Plaintiffs have developed
4 proprietary and confidential technical information used in connection with their Layer 4-7
5 technology, ServerIron products, ADX products, and other networking products. This proprietary
6 information concerns, for instance, the design and technology best suited for the products,
7 software code, including source code written for the products, fixes thereto, the performance
8 capabilities, constraints and challenges for the product, as well as potential product development
9 plans. These trade secrets have allowed, and continue to allow, Plaintiffs to design, implement,
10 customize, service, and sell the ServerIron and ADX products in an effective and cost-efficient
11 manner.

12 20. Along with the above-described technical trade secrets, Plaintiffs have developed a
13 great deal of valuable, proprietary, and confidential information regarding the customers and
14 marketing of their ServerIron and ADX products, including, for instance: the unique needs,
15 attitudes, constraints, and experiences of each customer; the features and specifications of the
16 products and systems that each customer has purchased or needs; the terms of agreements
17 between Plaintiffs and their customers; and the identities and preferences of key personnel at each
18 customer. These trade secrets have allowed, and continue to allow, Plaintiffs to optimize their
19 offerings, contracts, pricing, performance, marketing and sales, and to maintain good
20 relationships with their customers.

21 21. Plaintiffs also have developed a great deal of confidential, proprietary, and
22 valuable information regarding the skill levels, experience, specialties, performance attributes,
23 compensation levels, and attitudes of their employees. These trade secrets have enabled, and
24 continue to enable, Plaintiffs to maintain their premier employee base, and to allocate those
25 employees who are best suited and/or most experienced to particular customers and projects, all
26 of which enhances Plaintiffs' technology, products, performance, and relationships with their
27 customers and prospective customers.

28 22. Plaintiffs have exercised reasonable efforts to preserve the secrecy of the above-

1 described trade secrets. Among other measures, Plaintiffs' employees, in consideration for their
2 employment and receipt of confidential information, are required to sign agreements not to
3 disclose to any unauthorized person, or to use for any unauthorized purpose, any secret,
4 confidential or proprietary information connected with Plaintiffs' businesses.

5 **B. The Defendants And Their Theft Of Plaintiffs' Intellectual Property.**

6 23. In late 2009 and 2010, Plaintiffs obtained information that a group of Foundry's
7 former employees, who had left Foundry over the course of several years to start and/or join A10,
8 may have misused Foundry trade secrets and confidential information in the development of
9 computer networking products that were directly competitive with Plaintiffs' products. Prior to
10 this time, Plaintiffs were unaware that their confidential and trade secret information may have
11 been misappropriated by these former employees, in part due to Defendants' efforts to conceal
12 their misappropriation and recruitment activities from Plaintiffs. Indeed, Defendants for years
13 even concealed the nature of their company as one developing, producing, or selling load
14 balancing products. Plaintiffs had no reason to suspect that former colleagues (including the
15 individual defendants) would abuse the trust and confidence previously placed in them. Based on
16 learning this, and subsequent thereto, Plaintiffs launched an investigation that, over the course of
17 the past several months, turned up substantial evidence of wrongdoing, resulting in the filing of
18 this action and the following allegations.

19 24. Defendant Chen was a co-founder of Foundry, and served as a Fellow and Vice
20 President of Software Engineering until his departure in mid-August 2004. Chen supervised
21 teams of engineers responsible for the development of Foundry's Layer 4-7 technology, as well as
22 Foundry's ServerIron products. Chen also supervised and managed engineers who developed
23 Foundry's Layer 2-3 technology. Chen had complete access to Foundry's technical, customer
24 and employee trade secrets described above, including design documentation, product
25 development plans, and software code used in Foundry's products. Chen also supervised the
26 named inventors of the Patents-in-suit and was on Foundry's patent review committee.

27 25. As a founder and executive officer, Chen enjoyed a position of trust and
28 confidence at Foundry, which gave him full access to all aspects of Foundry's proprietary

1 technology and intellectual property. In particular, Chen was aware that Foundry had filed
2 several patent applications, some of which resulted in the Patents-in-suit, and maintained its
3 secret technical, customer, and employee information as trade secrets. Chen also had personal
4 knowledge of and experience with the Foundry technology disclosed and claimed in the Patents-
5 in-suit and the Foundry products that embodied that technology.

6 26. While still employed by Foundry, and without Foundry's knowledge or consent,
7 Chen began covertly working on a new business initially named OpTiMe Networks. On
8 information and belief, Chen's work on and the prospects for OpTiMe Networks were derived
9 from the work Chen had been asked to perform on Foundry's behalf, as a Foundry employee and
10 officer, in connection with implementing Foundry's next generation products' new security
11 features.

12 27. On information and belief, Chen made extensive use of Foundry resources to
13 develop OpTiMe Networks, including Foundry's employees, communication systems, computers,
14 contacts, proprietary and confidential information, know how, and documentation. On
15 information and belief, while Chen was still employed by Foundry, OpTiMe Networks acquired
16 Authenet, Inc., a security software firm, with which Foundry (and Chen on Foundry's behalf) had
17 been meeting to consider potential business relations and opportunities. In particular, Foundry
18 had tasked Chen with determining whether Foundry should partner with Authenet, or other
19 security companies, in connection with the development of new security features.

20 28. On information and belief, in July 2004, OpTiMe Networks was renamed Raksha
21 Networks.

22 29. Chen never disclosed to Foundry the existence of or his plans for OpTiMe
23 Networks or Raksha Networks, and failed, despite his then-existing obligations to present the
24 business opportunities that ultimately grew into OpTiMe and Raksha to Foundry, which he knew
25 Foundry was and would be interested in pursuing.

26 30. On July 29, 2004, while still a Foundry employee, and while continuing to use
27 Foundry resources, Chen incorporated Raksha Networks, Inc. On or before April 11, 2005,
28 Raksha Networks was renamed A10 Networks. On information and belief, throughout this time,

1 and notwithstanding his obligations and duties to Foundry, Chen devoted substantial time and
2 effort to the advancement of OpTiMe/Raksha/A10 while still employed by Foundry and without
3 Foundry's knowledge or consent.

4 31. On information and belief, Chen covertly expanded OpTiMe/Raksha/A10's
5 business to operate in precisely the same specialized market as Foundry and to compete directly
6 with Foundry, with products incorporating the added features Chen was supposed to have been
7 developing for Foundry. Chen ultimately set out to build his company and develop products (the
8 "Accused Products"), such as the A10 AX Series network devices, that would copy and compete
9 directly with the Foundry ServerIron products that he had helped develop while at Foundry.

10 32. Chen, with the assistance of others acting in concert with him, hid his and A10's
11 recruiting efforts from Plaintiffs, and implemented camouflage protocols to avoid detection. To
12 wit, on information and belief, Chen requested Foundry employees who he intended to have join
13 A10 to first resign from Foundry before he extended formal employment offers from A10. In
14 addition, on information and belief, Chen required former Foundry employees to delay coming
15 directly to A10 from Foundry for a period of time in order to avoid detection and suspicion by
16 Foundry.

17 33. Chen and A10, however, covertly recruited and hired more than thirty employees
18 from Plaintiffs over the course of several years. At any given time since its inception, the ex-
19 employees of Plaintiffs comprised anywhere from one-third to one-half of A10's entire work
20 force in the United States. On information and belief, A10 developed, marketed, and sold its
21 products through the acquisition and use of Plaintiffs' trade secrets and use of Plaintiffs'
22 copyrighted source code. On information and belief, Chen determined the features to include in
23 the Accused Products with full knowledge of the content of the Patents-in-suit.

24 34. Defendants Jalan and Szeto are former Foundry employees who, on information
25 and belief, were specifically recruited by Chen to work for A10. On information and belief, Chen
26 targeted Jalan and Szeto because of their intimate knowledge of and experience with Foundry's
27 valuable proprietary technology and trade secrets as a result of their integral work in the
28 development of the ServerIron products, as well as their institutional knowledge of Foundry and

1 its networking products, including Layer 2-3 and other Layer 4-7 products. While employed at
2 Foundry, Jalan was the chief architect of the ServerIron product line, Szeto was a senior engineer
3 closely involved with Jalan in the development of the ServerIron product line, and Chen
4 supervised Jalan and Szeto and oversaw the development of the ServerIron product line. Both
5 Jalan and Szeto also worked at Foundry on Foundry's Layer 2-3 networking products.

6 35. On information and belief, the hiring of Jalan and Szeto by A10 was strategic and
7 deliberate—to enable A10 to jump-start its development and bring to market a competing product
8 line in 2-3 years (or less) instead of a norm of 7-10 years in this industry. Chen publicly boasted
9 in a 2008 interview to an industry publication that the success of his company was due to the fact
10 that he had recruited “two of the best engineers from Foundry.”

11 36. On information and belief, Jalan is A10's Chief Technology Officer and a member
12 of A10's Management Team, and Szeto is a Software Manager at A10. On information and
13 belief, Jalan and Szeto have been deeply involved in the development of the Accused Products
14 from the time they joined A10 to the present and both knew of the underlying patent applications
15 that yielded the Patent-in-suit and of Foundry's activities to patent its technology.

16 37. Before leaving Foundry, Jalan and Szeto were very familiar with the Foundry trade
17 secrets, the design, performance, and constraints of the Foundry products, and the technology
18 identified in the Patents-in-suit, as well as the Foundry patent applications filed thereon. For
19 example, Jalan is a named inventor on the '195 Patent, the '009 Patent, and the '500 Patent while
20 Szeto is a named inventor on the '833 Patent. On information and belief, Jalan and Szeto used
21 the Foundry trade secrets, including Foundry's source code, in making and developing the A10
22 products, and developed the A10 products with full knowledge of the content of the Patents-in-
23 suit.

24 38. Defendant Han is a former Foundry Layer 4-7 software engineer who joined
25 Foundry in January 2003 and left to join A10 in February 2005. On information and belief, prior
26 to leaving Foundry, and while still employed by Foundry, Han regularly communicated with
27 Chen, Jalan, and others at A10 (including its predecessors OpTiMe and Raksha) about numerous
28 technical matters to assist in A10's development of technology and products in competition with

1 Foundry. On information and belief, in the course of these discussions, Han disclosed Plaintiffs'
2 technical trade secrets to Chen, Jalan, and others at A10 with knowledge that Chen, Jalan, and
3 others at A10 would use the information for A10's benefit, and in A10's products.

4 39. Defendant Hwang is a former Foundry hardware engineer. On information and
5 belief, in late 2004, and well before his February 25, 2005 departure from Foundry, Hwang began
6 working for competitor A10 (including its predecessors OpTiMe and Raksha). On information
7 and belief, Hwang regularly conducted business for Raksha using Foundry resources, and
8 corresponded on technical issues with A10 management, including, for example, Lee Chen,
9 Walter Yu, and John Chiong. On information and belief, during the course of these
10 communications, Hwang disclosed Plaintiffs' technical trade secrets with knowledge that Chen,
11 Yu, Chiong, and others at A10 would use the information for A10's benefit.

12 40. Defendant Cheung is a former Foundry and Brocade Layer 4-7 software engineer
13 who served in various roles at both companies, including Director of Layer 4-7 Software, from
14 July 1998 until his termination on March 15, 2010. Cheung also had access to Plaintiffs' trade
15 secrets during his employment at Foundry and later Brocade.

16 41. On information and belief, it was common practice, after Chen left Foundry, for
17 Chen to regularly socialize at Silicon Valley area restaurants and to frequently communicate by
18 electronic mail with Foundry and Brocade engineers (several of whom subsequently joined A10).

19 42. On information and belief, Chen and other A10 employees used these social
20 gatherings to selectively recruit Plaintiffs' employees who had knowledge of Plaintiffs'
21 proprietary technology and trade secrets to leave Plaintiffs and join A10.

22 43. In or around late 2004, Cheung met with Chen at A10's facility, located in San
23 Jose, California.

24 44. Cheung met with Chen at A10's facility at Chen's request. Chen represented to
25 Cheung at this meeting that A10 was not building a product that would compete with Foundry's
26 product line.

27 45. In or around late 2004, after Chen had left Foundry, Chen called Cheung and
28 requested that Cheung provide him with resumes of Foundry's Layer 4-7 engineering applicants.

1 On information and belief, Cheung obliged by forwarding the applicant information and
2 supporting materials of engineer applicants whom Foundry had not selected for employment.

3 46. On information and belief, at Chen's request, Cheung disclosed Plaintiffs'
4 technical trade secrets to Chen with knowledge that Chen would use the information for A10's
5 benefit. Cheung concealed this contact with Chen and improper disclosure from anyone in
6 management or in a position to take action at Foundry or Brocade.

7 47. As Foundry employees, the individual defendants each signed contracts entitled
8 "Proprietary Information and Inventions Agreement" (the "Agreement"). Paragraph 1 of the
9 Agreement is entitled "Recognition of Company's Rights; Nondisclosure," and provides:

10 At all times during the term of my employment and thereafter, I
11 will hold in strictest confidence and will not disclose, use, lecture
12 upon or publish any of the Company's Proprietary Information
13 (defined below), except as such disclosure, use or publication may
14 be required in connection with my work for the Company, or unless
15 an officer of the Company expressly authorizes such in writing. I
16 hereby assign to the Company any rights I may have or acquire in
17 such Proprietary Information and recognize that all Proprietary
18 Information shall be the sole property of the Company and its
19 assigns and that the Company and its assigns shall be the sole
20 owner of all patent rights, copyrights, mask work rights, trade secret
21 rights and all other rights throughout the world in connection
22 therewith.

23 48. The Agreement defines "Proprietary Information" as "trade secrets, confidential
24 knowledge, data or any other proprietary information of the Company." By way of illustration,
25 but not limitation, the Agreement specified that Proprietary Information includes "information
26 regarding plans for research, development, new products, marketing and selling, business plans,
27 budgets and unpublished financial statements, licenses, prices and costs, suppliers and customers;
28 and information regarding the skills and compensation of other employees of the Company."

29 49. Paragraph 3(a) of the Agreement is entitled "Assignment of Inventions," and it
30 provides:

31 I hereby assign to the Company all my right, title and interest in and
32 to any and all Inventions (and all Proprietary Rights with respect
33 thereto) whether or not patentable or registerable under copyright or
34 similar statutes, made or conceived or reduced to practice or learned
35 by me, either alone or jointly with others, during the period of my
36 employment with the Company.

1 50. Paragraph 7 of the Agreement is entitled "Additional Activities," and it provides:

2 I agree that during the period of my employment with the Company
3 I will not, without the Company's express written consent, engage
4 in any employment or business activity other than for the Company,
5 and for the period of my employment by the Company and for one
6 (1) year after the date of my employment by the Company I will not
7 (i) induce any employee of the Company to leave the employ of the
8 Company or (ii) solicit the business of any client or customer of the
9 Company (other than on behalf of the Company).

10 51. Defendants Chen, Jalan, Szeto, Han, Hwang, and Cheung continue to owe a
11 contractual duty to Plaintiffs not to disclose, use or retain their trade secrets without express
12 written authorization. The executed agreements are attached to the Complaint as **Exhibits A**
13 **through F**, respectively.

14 **C. Defendants Have Misappropriated Plaintiffs' Trade Secrets And Valuable**
15 **Information.**

16 52. On information and belief, the Defendants have engaged in schemes to
17 misappropriate for A10's use Plaintiffs' intellectual property with which they had access to and
18 familiarity with as a result of their employment, experience, and positions of confidence and trust
19 at Foundry and Brocade. The Defendants have misappropriated Plaintiffs' technical trade secrets
20 as described above, as well as the sales, marketing, and customer trade secrets. These were
21 acquired through the illicit use of Plaintiffs' employee trade secrets to enable Defendants to
22 recruit Plaintiffs' personnel. In effect, the Defendants embarked on a strategy to unlawfully
23 leverage all aspects of Plaintiffs' confidential and proprietary information in order to form a
24 "turn-key" enterprise to compete unfairly against the Plaintiffs in their unique market segment.

25 53. According to a recent article published in the San Jose Mercury News, A10 has
26 sixty-seven employees. Since A10's inception, no fewer than thirty-one are former Foundry and
27 Brocade employees with intimate knowledge of Plaintiffs' proprietary technology, intellectual
28 property, and highly-sensitive customer lists and contact information. Half of A10's
Management team is made up of former Foundry employees, including Defendants Chen and
Jalan.

54. On information and belief, without Plaintiffs' knowledge or consent, the

1 Defendants strategically recruited Plaintiffs' employees with access to and knowledge of critical
2 trade secrets and proprietary information. For example, on information and belief, while the
3 accused AX product was being planned, designed and developed, A10's strategic and covert
4 recruitment efforts from Foundry focused on, though was not limited to, a significant number of
5 Foundry engineers with access to and knowledge of Plaintiffs' source code and other technical
6 trade secrets, including Defendants Jalan, Szeto, Han, Hwang, as well as Dan Chen, John Jokom,
7 Brian Cho, Wen Chiu, C. Johnny Chen, Reza Ektefaie, William Lin, Ray Sun, and Gurudeep
8 Kamat. In addition, on information and belief, a number of individuals, including John Wei,
9 Steve Dwyer, Joyce Taylor, John Forte, Nick Loglisci, and Phillip Kwan, who were privy to
10 highly confidential sales, marketing and customer information, including Plaintiffs' customer
11 trade secrets, were also recruited by and joined A10. On information and belief, each of these
12 individuals also had access to Plaintiffs' employee trade secrets.

13 55. On information and belief, A10 was funded, at least in part, by the secret
14 investments of several current and former Foundry and Brocade employees, including several
15 employees who continued to work at Foundry, and later Brocade, where they had unfettered
16 access to Plaintiffs' trade secrets and proprietary information.

17 **D. A10 Announces A Competing Product And Recruits Plaintiffs' Sales Staff To Sell It.**

18 56. On information and belief, in and around 2007, A10 announced a forthcoming
19 product line known as the AX Series. At the time of this announcement, the product was not
20 available on the market, and A10 was not directly competing against Plaintiffs. At this time,
21 Plaintiffs were unaware that the AX Series was a competitive product to ServerIron and ADX
22 products.

23 57. On information and belief, by using Plaintiffs' trade secrets and copyrighted
24 software code, A10 was able to bring the AX Series products to market more quickly and more
25 cheaply than would have otherwise been possible, thereby gaining an unfair competitive
26 advantage over the Plaintiffs.

27 58. On information and belief, the A10 AX Series products utilize software code
28 copied from, or substantially similar to, Plaintiffs' copyrighted software code.

1 59. On information and belief, A10, including Chen, Jalan, Szeto, and Han after their
2 employment by Foundry ended, possessed and, on information and belief, still possess one or
3 more unauthorized copies of the Foundry source code, which embodies Plaintiffs' trade secrets.
4 On information and belief, the individual defendants and others at A10 used the Foundry source
5 code to develop the software code for the Accused Products, and actually incorporated the
6 Foundry source code, in whole or in part, into the code for the competing AX series.

7 60. On information and belief, between 2008 and 2010, after having built the AX
8 Series products, which bear striking similarities to Plaintiffs' ServerIron products, A10
9 commenced a second phase of stealth recruitment targeting Plaintiffs' sales and marketing
10 personnel so that A10 could leverage Plaintiffs' experience, knowledge, and customer contacts to
11 sell the AX Series products to Plaintiffs' actual and prospective customers.

12 61. On information and belief, A10 strategically recruited from Plaintiffs vital sales
13 personnel to join A10, including Lynn Sommerlot, Todd Harcourt, Guy Butler, Bryan Meckley,
14 Asoka De Saram, Roland Messmer, and Vincent Mischke. On information and belief, during
15 their employment at Foundry and Brocade, these employees had access to trade secrets, including
16 confidential sales and marketing information regarding Plaintiffs' products and customers. On
17 information and belief, after joining A10, the Plaintiffs' former sales personnel continued to
18 market and sell to the same customers on behalf of A10 using Plaintiffs' trade secrets.

19 **E. A10 Markets Its Competing Product To Plaintiffs' Established Customers.**

20 62. On information and belief, on or around 2009, A10 began marketing its products
21 by using Plaintiffs' proprietary information, by making disparaging statements about Plaintiffs'
22 products, and by interfering with Plaintiffs' attempts to market its products. For example, on
23 information and belief, A10 claimed publicly that it "knows the weaknesses of Brocade's
24 products and fixed them." In addition, on information and belief, A10 stated that it provides the
25 "next generation of Foundry product" and that it offers "twice the performance at half the price"
26 of the ServerIron and ADX products. A10 even induced Plaintiffs' employees to intentionally
27 interfere with customer sales presentations prior to their departure from Foundry and Brocade.

28 //

1 hereto as **Exhibit G** and made a part hereof.

2 68. Brocade is the owner of the '195 Patent pursuant to an assignment from Foundry
3 and has the right to enforce the '195 Patent, including the right to bring this suit for injunctive
4 relief and damages.

5 69. On information and belief, A10 has been and now is directly infringing, and
6 indirectly infringing by way of inducing infringement and/or contributing to the infringement of
7 the '195 Patent by making, using, selling, offering for sale, and/or importing, without authority,
8 products and services that are covered by one or more claims of the '195 Patent, including, but
9 not limited to, the Accused Products like the AX Series products.

10 70. On information and belief, Chen and Jalan have been and now are indirectly
11 infringing the '195 Patent by inducing A10 to make, use, sell, offer for sale, and/or import,
12 without authority, products and services that are covered by one or more claims of the '195
13 Patent, including, but not limited to, the Accused Products like the AX Series products.

14 71. On information and belief, A10 and certain of its officers and employees,
15 including, but not limited to, Chen and Jalan are aware of the existence of the '195 Patent and/or
16 one or more of the applications underlying the patent and, despite such knowledge, A10, Chen,
17 and Jalan continue to willfully, wantonly and deliberately engage in acts of infringement, as that
18 term is defined in 35 U.S.C. § 271, without regard to the '195 Patent.

19 72. Brocade has been and continues to be damaged by the infringement by A10, Chen,
20 and Jalan of the '195 Patent, in an amount to be determined at trial.

21 73. Brocade has suffered irreparable injury for which there is no adequate remedy at
22 law and will continue to suffer such irreparable injury unless the aforementioned infringement of
23 the '195 Patent is enjoined by this Court.

24 74. This is an exceptional case and entitles Brocade to attorneys' fees and costs
25 incurred in prosecuting this action under 35 U.S.C. § 285.

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SECOND CLAIM FOR RELIEF
(Infringement of U.S. Patent 7,581,009 Against A10, Chen, and Jalan)

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3 75. Each of the foregoing paragraphs is incorporated in this Second Claim for Relief
4 as if fully set forth herein.

5 76. On August 25, 2009, the '009 Patent duly and legally issued to Foundry under its
6 former name of Foundry Networks, Inc. This patent is titled "Global Server Load Balancing." A
7 copy of the '009 Patent is attached hereto as **Exhibit H** and made a part hereof.

8 77. Brocade is the owner of the '009 Patent pursuant to an assignment from Foundry
9 and has the right to enforce the '009 Patent, including the right to bring this suit for injunctive
10 relief and damages.

11 78. On information and belief, A10 has been and now is directly infringing, and
12 indirectly infringing by way of inducing infringement and/or contributing to the infringement of
13 the '009 Patent by making, using, selling, offering for sale, and/or importing, without authority,
14 products and services that are covered by one or more claims of the '009 Patent, including, but
15 not limited to, the Accused Products like the AX Series products.

16 79. On information and belief, Chen and Jalan have been and now are indirectly
17 infringing the '009 Patent by inducing A10 to make, use, sell, offer for sale, and/or import,
18 without authority, products and services that are covered by one or more claims of the '009
19 Patent, including, but not limited to, the Accused Products like the AX Series products.

20 80. On information and belief, A10 and certain of its officers and employees,
21 including, but not limited to, Chen and Jalan are aware of the existence of the '009 Patent and/or
22 one or more of the applications underlying the patent and, despite such knowledge, A10, Chen,
23 and Jalan continue to willfully, wantonly and deliberately engage in acts of infringement, as that
24 term is defined in 35 U.S.C. § 271, without regard to the '009 Patent.

25 81. Brocade has been and continues to be damaged by the infringement by A10, Chen,
26 and Jalan of the '009 Patent, in an amount to be determined at trial.

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1 82. Brocade has suffered irreparable injury for which there is no adequate remedy at
2 law and will continue to suffer such irreparable injury unless the aforementioned infringement of
3 the '009 Patent is enjoined by this Court.

4 83. This is an exceptional case that entitles Brocade to attorneys' fees and costs
5 incurred in prosecuting this action under 35 U.S.C. § 285.

6 **THIRD CLAIM FOR RELIEF**
7 **(Infringement of U.S. Patent 7,454,500 Against A10, Chen, and Jalan)**

8 84. Each of the foregoing paragraphs is incorporated in this Third Claim for Relief as
9 if fully set forth herein.

10 85. On November 18, 2008, the '500 Patent duly and legally issued to Foundry under
11 its former name of Foundry Networks, Inc. This patent is titled "Global Server Load Balancing."
12 A copy of the '500 Patent is attached hereto as **Exhibit I** and made a part hereof.

13 86. Brocade is the owner of the '500 Patent pursuant to an assignment from Foundry
14 and has the right to enforce the '500 Patent, including the right to bring this suit for injunctive
15 relief and damages.

16 87. On information and belief, A10 has been and now is directly infringing, and
17 indirectly infringing by way of inducing infringement and/or contributing to the infringement of
18 the '500 Patent by making, using, selling, offering for sale, and/or importing, without authority,
19 products and services that are covered by one or more claims of the '500 Patent, including, but
20 not limited to, the Accused Products like the AX Series products.

21 88. On information and belief, Chen and Jalan have been and now are indirectly
22 infringing the '500 Patent by inducing A10 to make, use, sell, offer for sale, and/or import,
23 without authority, products and services that are covered by one or more claims of the '500
24 Patent, including, but not limited to, the Accused Products like the AX Series products.

25 89. On information and belief, A10 and certain of its officers and employees,
26 including, but not limited to, Chen and Jalan are aware of the existence of the '500 Patent and/or
27 one or more of the applications underlying the patent and, despite such knowledge, A10, Chen,
28 and Jalan continue to willfully, wantonly and deliberately engage in acts of infringement, as that

1 term is defined in 35 U.S.C. § 271, without regard to the ‘500 Patent.

2 90. Brocade has been and continues to be damaged by the infringement by A10, Chen,
3 and Jalan of the ‘500 Patent, in an amount to be determined at trial.

4 91. Brocade has suffered irreparable injury for which there is no adequate remedy at
5 law and will continue to suffer such irreparable injury unless the aforementioned infringement of
6 the ‘500 Patent is enjoined by this Court.

7 92. This is an exceptional case that entitles Brocade to attorneys’ fees and costs
8 incurred in prosecuting this action under 35 U.S.C. § 285.

9 **FOURTH CLAIM FOR RELIEF**
10 **(Infringement of U.S. Patent 7,574,508 Against A10, Chen, and Jalan)**

11 93. Each of the foregoing paragraphs is incorporated in this Fourth Claim for Relief as
12 if fully set forth herein.

13 94. On August 11, 2009, the ‘508 Patent duly and legally issued to Foundry under its
14 former name of Foundry Networks, Inc. This patent is titled “Canonical name (CNAME)
15 Handling for Global Server Load Balancing.” A copy of the ‘508 Patent is attached hereto as
16 **Exhibit J** and made a part hereof.

17 95. Brocade is the owner of the ‘508 Patent pursuant to an assignment from Foundry
18 and has the right to enforce the ‘508 Patent, including the right to bring this suit for injunctive
19 relief and damages.

20 96. On information and belief, A10 has been and now is directly infringing, and
21 indirectly infringing by way of inducing infringement and/or contributing to the infringement of
22 the ‘508 Patent by making, using, selling, offering for sale, and/or importing, without authority,
23 products and services that are covered by one or more claims of the ‘508 Patent, including, but
24 not limited to, the Accused Products like the AX Series products.

25 97. On information and belief, Chen and Jalan have been and now are indirectly
26 infringing the ‘508 Patent by inducing A10 to make, use, sell, offer for sale, and/or import,
27 without authority, products and services that are covered by one or more claims of the ‘508
28 Patent, including, but not limited to, the Accused Products like the AX Series products.

1 98. On information and belief, A10 and certain of its officers and employees,
2 including, but not limited to, Chen and Jalan are aware of the existence of the '508 Patent and/or
3 one or more of the applications underlying the patent and, despite such knowledge, A10, Chen,
4 and Jalan continue to willfully, wantonly and deliberately engage in acts of infringement, as that
5 term is defined in 35 U.S.C. § 271, without regard to the '508 Patent.

6 99. Brocade has been and continues to be damaged by the infringement by A10, Chen,
7 and Jalan of the '508 Patent, in an amount to be determined at trial.

8 100. Brocade has suffered irreparable injury for which there is no adequate remedy at
9 law and will continue to suffer such irreparable injury unless the aforementioned infringement of
10 the '508 Patent is enjoined by this Court.

11 101. This is an exceptional case that entitles Brocade to attorneys' fees and costs
12 incurred in prosecuting this action under 35 U.S.C. § 285.

13 **FIFTH CLAIM FOR RELIEF**
14 **(Infringement of U.S. Patent 7,647,427 Against A10, Chen, and Jalan)**

15 102. Each of the foregoing paragraphs is incorporated in this Fifth Claim for Relief as if
16 fully set forth herein.

17 103. On January 12, 2010, the '427 Patent duly and legally issued to Foundry under its
18 former name of Foundry Networks, Inc. This patent is titled "Redundancy Support for Network
19 Address Translation (NAT)." A copy of the '427 Patent is attached hereto as **Exhibit K** and
20 made a part hereof.

21 104. Brocade is the owner of the '427 Patent pursuant to an assignment from Foundry
22 and has the right to enforce the '427 Patent, including the right to bring this suit for injunctive
23 relief and damages.

24 105. On information and belief, A10 has been and now is directly infringing, and
25 indirectly infringing by way of inducing infringement and/or contributing to the infringement of
26 the '427 Patent by making, using, selling, offering for sale, and/or importing, without authority,
27 products and services that are covered by one or more claims of the '427 Patent, including, but
28 not limited to, the Accused Products like the AX Series products.

1 106. On information and belief, Chen and Jalan have been and now are indirectly
2 infringing the ‘427 Patent by inducing A10 to make, use, sell, offer for sale, and/or import,
3 without authority, products and services that are covered by one or more claims of the ‘427
4 Patent, including, but not limited to, the Accused Products like the AX Series products.

5 107. On information and belief, A10 and certain of its officers and employees,
6 including, but not limited to, Chen and Jalan are aware of the existence of the ‘427 Patent and/or
7 one or more of the applications underlying the patent and, despite such knowledge, A10, Chen,
8 and Jalan continue to willfully, wantonly and deliberately engage in acts of infringement, as that
9 term is defined in 35 U.S.C. § 271, without regard to the ‘427 Patent.

10 108. Brocade has been and continues to be damaged by the infringement by A10, Chen,
11 and Jalan of the ‘427 Patent, in an amount to be determined at trial.

12 109. Brocade has suffered irreparable injury for which there is no adequate remedy at
13 law and will continue to suffer such irreparable injury unless the aforementioned infringement of
14 the ‘427 Patent is enjoined by this Court.

15 110. This is an exceptional case that entitles Brocade to attorneys’ fees and costs
16 incurred in prosecuting this action under 35 U.S.C. § 285.

17 **SIXTH CLAIM FOR RELIEF**
18 **(Infringement of U.S. Patent 7,657,629 Against A10, Chen, and Jalan)**

19 111. Each of the foregoing paragraphs is incorporated in this Sixth Claim for Relief as
20 if fully set forth herein.

21 112. On February 2, 2010, the ‘629 Patent duly and legally issued to Foundry under its
22 former name of Foundry Networks, Inc. This patent is titled “Global Server Load Balancing.” A
23 copy of the ‘629 Patent is attached hereto as **Exhibit L** and made a part hereof.

24 113. Brocade is the owner of the ‘629 Patent pursuant to an assignment from Foundry
25 and has the right to enforce the ‘629 Patent, including the right to bring this suit for injunctive
26 relief and damages.

27 114. On information and belief, A10 has been and now is directly infringing, and
28 indirectly infringing by way of inducing infringement and/or contributing to the infringement of

1 the '629 Patent by making, using, selling, offering for sale, and/or importing, without authority,
2 products and services that are covered by one or more claims of the '629 Patent, including, but
3 not limited to, the Accused Products like the AX Series products.

4 115. On information and belief, Chen and Jalan have been and now are indirectly
5 infringing the '629 Patent by inducing A10 to make, use, sell, offer for sale, and/or import,
6 without authority, products and services that are covered by one or more claims of the '629
7 Patent, including, but not limited to, the Accused Products like the AX Series products.

8 116. On information and belief, A10 and certain of its officers and employees,
9 including, but not limited to, Chen and Jalan are aware of the existence of the '629 Patent and/or
10 one or more of the applications underlying the patent and, despite such knowledge, A10, Chen,
11 and Jalan continue to willfully, wantonly and deliberately engage in acts of infringement, as that
12 term is defined in 35 U.S.C. § 271, without regard to the '629 Patent.

13 117. Brocade has been and continues to be damaged by the infringement by A10, Chen,
14 and Jalan of the '629 Patent, in an amount to be determined at trial.

15 118. Brocade has suffered irreparable injury for which there is no adequate remedy at
16 law and will continue to suffer such irreparable injury unless the aforementioned infringement of
17 the '629 Patent is enjoined by this Court.

18 119. This is an exceptional case that entitles Brocade to attorneys' fees and costs
19 incurred in prosecuting this action under 35 U.S.C. § 285.

20 **SEVENTH CLAIM FOR RELIEF**
21 **(Infringement of U.S. Patent 7,584,301 Against A10, Chen, and Jalan)**

22 120. Each of the foregoing paragraphs is incorporated in this Seventh Claim for Relief
23 as if fully set forth herein.

24 121. On September 1, 2009, the '301 Patent duly and legally issued to Foundry under
25 its former name of Foundry Networks, Inc. This patent is titled "Host-Level Policies For Global
26 Server Load Balancing." A copy of the '301 Patent is attached hereto as **Exhibit M** and made a
27 part hereof.

28 122. Brocade is the owner of the '301 Patent pursuant to an assignment from Foundry

1 and has the right to enforce the '301 Patent, including the right to bring this suit for injunctive
2 relief and damages.

3 123. On information and belief, A10 has been and now is directly infringing, and
4 indirectly infringing by way of inducing infringement and/or contributing to the infringement of
5 the '301 Patent by making, using, selling, offering for sale, and/or importing, without authority,
6 products and services that are covered by one or more claims of the '301 Patent, including, but
7 not limited to, the Accused Products like the AX Series products.

8 124. On information and belief, Chen and Jalan have been and now are indirectly
9 infringing the '301 Patent by inducing A10 to make, use, sell, offer for sale, and/or import,
10 without authority, products and services that are covered by one or more claims of the '301
11 Patent, including, but not limited to, the Accused Products like the AX Series products.

12 125. On information and belief, A10 and certain of its officers and employees,
13 including, but not limited to, Chen and Jalan are aware of the existence of the '301 Patent and/or
14 one or more of the applications underlying the patent and, despite such knowledge, A10, Chen,
15 and Jalan continue to willfully, wantonly and deliberately engage in acts of infringement, as that
16 term is defined in 35 U.S.C. § 271, without regard to the '301 Patent.

17 126. Brocade has been and continues to be damaged by the infringement by A10, Chen,
18 and Jalan of the '301 Patent, in an amount to be determined at trial.

19 127. Brocade has suffered irreparable injury for which there is no adequate remedy at
20 law and will continue to suffer such irreparable injury unless the aforementioned infringement of
21 the '301 Patent is enjoined by this Court.

22 128. This is an exceptional case that entitles Brocade to attorneys' fees and costs
23 incurred in prosecuting this action under 35 U.S.C. § 285.

24 **EIGHTH CLAIM FOR RELIEF**
25 **(Infringement of U.S. Patent 7,716,370 Against A10, Chen, and Jalan)**

26 129. Each of the foregoing paragraphs is incorporated in this Eighth Claim for Relief as
27 if fully set forth herein.

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1 130. On May 11, 2010, the '370 Patent duly and legally issued to Foundry under its
2 former name of Foundry Networks, Inc. This patent is titled "Redundancy Support for Network
3 Address Translation (NAT)." A copy of the '370 Patent is attached hereto as **Exhibit N** and
4 made a part hereof.

5 131. Brocade is the owner of the '370 Patent pursuant to an assignment from Foundry
6 and has the right to enforce the '370 Patent, including the right to bring this suit for injunctive
7 relief and damages.

8 132. On information and belief, A10 has been and now is directly infringing, and
9 indirectly infringing by way of inducing infringement and/or contributing to the infringement of
10 the '370 Patent by making, using, selling, offering for sale, and/or importing, without authority,
11 products and services that are covered by one or more claims of the '370 Patent, including, but
12 not limited to, the Accused Products like the AX Series products.

13 133. On information and belief, Chen and Jalan have been and now are indirectly
14 infringing the '370 Patent by inducing A10 to make, use, sell, offer for sale, and/or import,
15 without authority, products and services that are covered by one or more claims of the '370
16 Patent, including, but not limited to, the Accused Products like the AX Series products.

17 134. On information and belief, A10 and certain of its officers and employees,
18 including, but not limited to, Chen and Jalan are aware of the existence of the '370 Patent and/or
19 one or more of the applications underlying the patent and, despite such knowledge, A10, Chen,
20 and Jalan continue to willfully, wantonly and deliberately engage in acts of infringement, as that
21 term is defined in 35 U.S.C. § 271, without regard to the '370 Patent.

22 135. Brocade has been and continues to be damaged by the infringement by A10, Chen,
23 and Jalan of the '370 Patent, in an amount to be determined at trial.

24 136. Brocade has suffered irreparable injury for which there is no adequate remedy at
25 law and will continue to suffer such irreparable injury unless the aforementioned infringement of
26 the '370 Patent is enjoined by this Court.

27 137. This is an exceptional case that entitles Brocade to attorneys' fees and costs
28 incurred in prosecuting this action under 35 U.S.C. § 285.

1 **NINTH CLAIM FOR RELIEF**
2 **(Infringement of U.S. Patent 7,720,977 Against A10, Chen, and Jalan)**

3 138. Each of the foregoing paragraphs is incorporated in this Ninth Claim for Relief as
4 if fully set forth herein.

5 139. On May 11, 2010, the '977 Patent duly and legally issued to Foundry under its
6 former name of Foundry Networks, Inc. This patent is titled "Cookie Invalidation or Expiration
7 by a Switch." A copy of the '977 Patent is attached hereto as **Exhibit O** and made a part hereof.

8 140. Brocade is the owner of the '977 Patent pursuant to an assignment from Foundry
9 and has the right to enforce the '977 Patent, including the right to bring this suit for injunctive
10 relief and damages.

11 141. On information and belief, A10 has been and now is directly infringing, and
12 indirectly infringing by way of inducing infringement and/or contributing to the infringement of
13 the '977 Patent by making, using, selling, offering for sale, and/or importing, without authority,
14 products and services that are covered by one or more claims of the '977 Patent, including, but
15 not limited to, the Accused Products like the AX Series products.

16 142. On information and belief, Chen and Jalan have been and now are indirectly
17 infringing the '977 Patent by inducing A10 to make, use, sell, offer for sale, and/or import,
18 without authority, products and services that are covered by one or more claims of the '977
19 Patent, including, but not limited to, the Accused Products like the AX Series products.

20 143. On information and belief, A10 and certain of its officers and employees,
21 including, but not limited to, Chen and Jalan are aware of the existence of the '977 Patent and/or
22 one or more of the applications underlying the patent and, despite such knowledge, A10, Chen,
23 and Jalan continue to willfully, wantonly and deliberately engage in acts of infringement, as that
24 term is defined in 35 U.S.C. § 271, without regard to the '977 Patent.

25 144. Brocade has been and continues to be damaged by the infringement by A10, Chen,
26 and Jalan of the '977 Patent, in an amount to be determined at trial.

27 145. Brocade has suffered irreparable injury for which there is no adequate remedy at
28 law and will continue to suffer such irreparable injury unless the aforementioned infringement of

1 the '977 Patent is enjoined by this Court.

2 146. This is an exceptional case that entitles Brocade to attorneys' fees and costs
3 incurred in prosecuting this action under 35 U.S.C. § 285.

4 **TENTH CLAIM FOR RELIEF**
5 **(Infringement of U.S. Patent 7,774,833 Against A10, Chen, and Jalan)**

6 147. Each of the foregoing paragraphs is incorporated in this Tenth Claim for Relief as
7 if fully set forth herein.

8 148. On August 10, 2010, the '833 Patent duly and legally issued to Foundry under its
9 former name of Foundry Networks, Inc. This patent is titled "System And Method For Protecting
10 CPU Against Remote Access Attacks." A copy of the '833 Patent is attached hereto as **Exhibit P**
11 and made a part hereof.

12 149. Brocade is the owner of the '833 Patent pursuant to an assignment from Foundry
13 and has the right to enforce the '833 Patent, including the right to bring this suit for injunctive
14 relief and damages.

15 150. On information and belief, A10 has been and now is directly infringing, and
16 indirectly infringing by way of inducing infringement and/or contributing to the infringement of
17 the '833 Patent by making, using, selling, offering for sale, and/or importing, without authority,
18 products and services that are covered by one or more claims of the '833 Patent, including, but
19 not limited to, the Accused Products like the AX Series products.

20 151. On information and belief, Chen and Jalan have been and now are indirectly
21 infringing the '833 Patent by inducing A10 to make, use, sell, offer for sale, and/or import,
22 without authority, products and services that are covered by one or more claims of the '833
23 Patent, including, but not limited to, the Accused Products like the AX Series products.

24 152. On information and belief, A10 and certain of its officers and employees,
25 including, but not limited to, Chen and Jalan are aware of the existence of the '833 Patent and/or
26 one or more of the applications underlying the patent and, despite such knowledge, A10, Chen,
27 and Jalan continue to willfully, wantonly and deliberately engage in acts of infringement, as that
28 term is defined in 35 U.S.C. § 271, without regard to the '833 Patent.

1 153. Brocade has been and continues to be damaged by the infringement by A10, Chen,
2 and Jalan of the '833 Patent, in an amount to be determined at trial.

3 154. Brocade has suffered irreparable injury for which there is no adequate remedy at
4 law and will continue to suffer such irreparable injury unless the aforementioned infringement of
5 the '833 Patent is enjoined by this Court.

6 155. This is an exceptional case that entitles Brocade to attorneys' fees and costs
7 incurred in prosecuting this action under 35 U.S.C. § 285.

8 **ELEVENTH CLAIM FOR RELIEF**
9 **(Infringement of U.S. Patent 7,756,965 Against A10, Chen, and Jalan)**

10 156. Each of the foregoing paragraphs is incorporated in this Eleventh Claim for Relief
11 as if fully set forth herein.

12 157. On July 13, 2010, the '965 Patent duly and legally issued to Foundry under its
13 former name of Foundry Networks, Inc. This patent is titled "Configurable Geographic Prefixes
14 For Global Server Load Balancing." A copy of the '965 Patent is attached hereto as **Exhibit Q**
15 and made a part hereof.

16 158. Brocade is the owner of the '965 Patent pursuant to an assignment from Foundry
17 and has the right to enforce the '965 Patent, including the right to bring this suit for injunctive
18 relief and damages.

19 159. On information and belief, A10 has been and now is directly infringing, and
20 indirectly infringing by way of inducing infringement and/or contributing to the infringement of
21 the '965 Patent by making, using, selling, offering for sale, and/or importing, without authority,
22 products and services that are covered by one or more claims of the '965 Patent, including, but
23 not limited to, the Accused Products like the AX Series products.

24 160. On information and belief, Chen and Jalan have been and now are indirectly
25 infringing the '965 Patent by inducing A10 to make, use, sell, offer for sale, and/or import,
26 without authority, products and services that are covered by one or more claims of the '965
27 Patent, including, but not limited to, the Accused Products like the AX Series products.

28 161. On information and belief, A10 and certain of its officers and employees,

1 including, but not limited to, Chen and Jalan are aware of the existence of the '965 Patent and/or
2 one or more of the applications underlying the patent and, despite such knowledge, A10, Chen,
3 and Jalan continue to willfully, wantonly and deliberately engage in acts of infringement, as that
4 term is defined in 35 U.S.C. § 271, without regard to the '965 Patent.

5 162. Brocade has been and continues to be damaged by the infringement by A10, Chen,
6 and Jalan of the '965 Patent, in an amount to be determined at trial.

7 163. Brocade has suffered irreparable injury for which there is no adequate remedy at
8 law and will continue to suffer such irreparable injury unless the aforementioned infringement of
9 the '965 Patent is enjoined by this Court.

10 164. This is an exceptional case and entitles Brocade to attorneys' fees and costs
11 incurred in prosecuting this action under 35 U.S.C. § 285.

12 **TWELFTH CLAIM FOR RELIEF**
13 **(Infringement of U.S. Patent 7,899,899 Against A10, Chen, and Jalan)**

14 165. Each of the foregoing paragraphs is incorporated in this Twelfth Claim for Relief
15 as if fully set forth herein.

16 166. On March 1, 2011, the '899 Patent duly and legally issued to Foundry Networks,
17 LLC. This patent is titled "Configurable Geographic Prefixes For Global Server Load
18 Balancing." A copy of the '899 Patent is attached hereto as **Exhibit R** and made a part hereof.

19 167. Brocade is the owner of the '899 Patent pursuant to an assignment from Foundry
20 and has the right to enforce the '899 Patent, including the right to bring this suit for injunctive
21 relief and damages.

22 168. On information and belief, A10 has been and now is directly infringing, and
23 indirectly infringing by way of inducing infringement and/or contributing to the infringement of
24 the '899 Patent by making, using, selling, offering for sale, and/or importing, without authority,
25 products and services that are covered by one or more claims of the '899 Patent, including, but
26 not limited to, the Accused Products like the AX Series products.

27 169. On information and belief, Chen and Jalan have been and now are indirectly
28 infringing the '899 Patent by inducing A10 to make, use, sell, offer for sale, and/or import,

1 without authority, products and services that are covered by one or more claims of the '899
2 Patent, including, but not limited to, the Accused Products like the AX Series products.

3 170. On information and belief, A10 and certain of its officers and employees,
4 including, but not limited to, Chen and Jalan are aware of the existence of the '899 Patent and/or
5 one or more of the applications underlying the patent and, despite such knowledge, A10, Chen,
6 and Jalan continue to willfully, wantonly and deliberately engage in acts of infringement, as that
7 term is defined in 35 U.S.C. § 271, without regard to the '899 Patent.

8 171. Brocade has been and continues to be damaged by the infringement by A10, Chen,
9 and Jalan of the '899 Patent, in an amount to be determined at trial.

10 172. Brocade has suffered irreparable injury for which there is no adequate remedy at
11 law and will continue to suffer such irreparable injury unless the aforementioned infringement of
12 the '899 Patent is enjoined by this Court.

13 173. This is an exceptional case and entitles Brocade to attorneys' fees and costs
14 incurred in prosecuting this action under 35 U.S.C. § 285.

15 **THIRTEENTH CLAIM FOR RELIEF**
16 **(Infringement of U.S. Patent 7,840,678 Against A10, Chen, and Jalan)**

17 174. Each of the foregoing paragraphs is incorporated in this Thirteenth Claim for
18 Relief as if fully set forth herein.

19 175. On November 23, 2010, the '678 Patent duly and legally issued to Brocade
20 Communications Systems. This patent is titled "Host-Level Policies For Global Server Load
21 Balancing." A copy of the '678 Patent is attached hereto as **Exhibit S** and made a part hereof.

22 176. Brocade is the owner of the '678 Patent, including the right to bring this suit for
23 injunctive relief and damages.

24 177. On information and belief, A10 has been and now is directly infringing, and
25 indirectly infringing by way of inducing infringement and/or contributing to the infringement of
26 the '678 Patent by making, using, selling, offering for sale, and/or importing, without authority,
27 products and services that are covered by one or more claims of the '678 Patent, including, but
28 not limited to, the Accused Products like the AX Series products.

1 178. On information and belief, Chen and Jalan have been and now are indirectly
2 infringing the '678 Patent by inducing A10 to make, use, sell, offer for sale, and/or import,
3 without authority, products and services that are covered by one or more claims of the '678
4 Patent, including, but not limited to, the Accused Products like the AX Series products.

5 179. On information and belief, A10 and certain of its officers and employees,
6 including, but not limited to, Chen and Jalan are aware of the existence of the '678 Patent and/or
7 one or more of the applications underlying the patent and, despite such knowledge, A10, Chen,
8 and Jalan continue to willfully, wantonly and deliberately engage in acts of infringement, as that
9 term is defined in 35 U.S.C. § 271, without regard to the '678 Patent.

10 180. Brocade has been and continues to be damaged by the infringement by A10, Chen,
11 and Jalan of the '678 Patent, in an amount to be determined at trial.

12 181. Brocade has suffered irreparable injury for which there is no adequate remedy at
13 law and will continue to suffer such irreparable injury unless the aforementioned infringement of
14 the '678 Patent is enjoined by this Court.

15 182. This is an exceptional case and entitles Brocade to attorneys' fees and costs
16 incurred in prosecuting this action under 35 U.S.C. § 285.

17 **FOURTEENTH CLAIM FOR RELIEF**
18 **(Copyright Infringement, 17 U.S.C. §§ 502, et seq. Against A10)**

19 183. Each of the foregoing paragraphs is incorporated in this Fourteenth Claim for
20 Relief as if fully set forth herein.

21 184. Plaintiffs created the BigIron software and ServerIron software. The BigIron
22 software and ServerIron software are copyrightable subject matter under 17 U.S.C. §§ 101 and
23 102. Copies of the Certificates of Registration issued by the U.S. Copyright Office for the
24 Copyrighted Works is attached hereto as **Exhibit T** and made a part hereof.

25 185. At all relevant times, Plaintiffs have been the legal and exclusive owners of the
26 exclusive rights under the Copyright Act to reproduce, distribute, and prepare derivative works of
27 the Copyrighted Works.
28

1 186. On information and belief, A10 has made one or more copies of the Copyrighted
2 Works in the United States without authorization from Plaintiffs and distributed one or more
3 copies of the Copyrighted Works without Plaintiffs' authorization. On information and belief,
4 A10 has continued to copy and to make derivative works of the Copyrighted Works from time to
5 time without authorization from Plaintiffs.

6 187. On information and belief, the software code for A10's products, including for the
7 AX Series, is substantially similar to the protectable elements of Plaintiffs' software code. This
8 substantial similarity is a result of A10 copying Plaintiffs' protected software code.

9 188. A10's acts are an infringement of Plaintiffs' rights in the Copyrighted Works.

10 189. A10 committed all acts willfully and with malice. As a direct and proximate cause
11 of A10's infringement of the Copyrighted Works, Plaintiffs have been damaged by, and A10 has
12 profited from, A10's wrongful conduct. The amount and extent of such damages is to be
13 determined.

14 190. As a result of A10's infringement, Plaintiffs have suffered and will continue to
15 suffer irreparable harm unless A10, its officers, agents, employees, and all persons acting in
16 concert with it, are restrained from infringing Plaintiffs' Copyrighted Works.

17 **FIFTEENTH CLAIM FOR RELIEF**
18 **(Trade Secret Misappropriation, Cal. Civ. Code §§ 3426 *et seq.*, Against All Defendants)**

19 191. Each of the foregoing paragraphs is incorporated in this Fifteenth Claim for Relief
20 as if fully set forth herein.

21 192. Plaintiffs have enjoyed, and continue to enjoy, an advantage over their existing
22 and prospective competitors in the design, development, production, service, marketing, and sale
23 of products and services because of the above-described confidential and proprietary information,
24 including design documentation, plans and software code for the ServerIron and ADX products,
25 as well as Plaintiffs' confidential customer and employee information.

26 193. Plaintiffs have made reasonable efforts under the circumstances to preserve the
27 confidentiality of this information. Such information derives independent economic value from
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1 not being generally known to the public or to other persons who can obtain economic value from
2 their disclosure or use. Accordingly, the above-described information constitutes “trade secrets,”
3 under California’s Uniform Trade Secrets Act, California Civil Code §§ 3426 *et seq.*

4 194. Plaintiffs’ current and former employees, including Chen, Jalan, Szeto, Han,
5 Hwang, and Cheung, have been, and continue to be, under a duty to keep Plaintiffs’ proprietary
6 and confidential information secret, and not to use or disclose such information other than for the
7 benefit of Plaintiffs and with Plaintiffs’ authorization. The individual defendants knew or should
8 have known that they had acquired such information under circumstances giving rise to a duty to
9 maintain its secrecy or limit its use, and/or derived from or through a person who has such a duty
10 and/or through improper means. Nevertheless, the individual defendants disclosed this
11 information to A10 and other persons acting in concert with A10, and have used and are using
12 that information, e.g., at A10 and in A10’s products, including the AX series, all without the
13 express or implied consent of Foundry or Brocade.

14 195. The Defendants acquired the above-described information from persons they knew
15 or reasonably should have known owed a duty to Plaintiffs to maintain the information in secrecy
16 or acquired the information through improper means. The Defendants subsequently used this
17 information in connection with A10’s business activities, in a manner adverse to Plaintiffs’
18 business interests.

19 196. The Defendants used and are using Plaintiffs’ trade secrets without Plaintiffs’
20 express or implied consent and/or used improper means to acquire knowledge of the trade secrets.

21 197. The Defendants obtained the proprietary and confidential information described
22 above directly or indirectly from Plaintiffs and not from generally available information or from
23 the Defendants’ own independent research and efforts.

24 198. The actions of the Defendants constitute misappropriation of Plaintiffs’ trade
25 secrets under California Civil Code §§ 3426 *et seq.*

26 199. Each of the acts of misappropriation was done willfully and maliciously by the
27 Defendants, thereby entitling Plaintiffs to exemplary damages to be proven at trial pursuant to
28 California Civil Code § 3426.3(c).

1 200. As a direct and proximate result of the Defendants’ misappropriation of Plaintiffs’
 2 trade secrets, the Defendants have been unjustly enriched, and Plaintiffs have sustained damages
 3 in an amount to be proven at trial. Brocade also has suffered irreparable harm as a result of the
 4 Defendants’ activities, and will continue to suffer irreparable injury that cannot be adequately
 5 remedied at law unless the Defendants, and their officers, agents and employees, and all other
 6 persons acting in concert with them, are enjoined from engaging in any further acts of
 7 misappropriation.

8 **SIXTEENTH CLAIM FOR RELIEF**
 9 **(Breach of Contract Against All Defendants Except A10)**

10 201. Each of the foregoing paragraphs is incorporated in this Sixteenth Claim for Relief
 11 as if fully set forth herein.

12 202. Defendants Chen, Jalan, Szeto, Han, Hwang, and Cheung separately entered into
 13 valid contracts with Foundry.

14 203. The Proprietary Information and Inventions Agreement provides: “[a]t all times
 15 during the term of my employment and thereafter, I will hold in strictest confidence and will not
 16 disclose, use, lecture upon or publish any of the Company’s Proprietary Information (defined
 17 below), except as such disclosure, use or publication may be required in connection with my work
 18 for the Company, or unless an officer of the Company expressly authorizes such in writing.” In
 19 addition, the Agreement defines “Proprietary Information” as “trade secrets, confidential
 20 knowledge, data or any other proprietary information of the Company.”

21 204. The Agreement also states that “I hereby assign to the Company all my right, title
 22 and interest in and to any and all Inventions (and all Proprietary Rights with respect thereto)
 23 whether or not patentable or registerable under copyright or similar statutes, made or conceived or
 24 reduced to practice or learned by me, either alone or jointly with others, during the period of my
 25 employment with the Company.”

26 205. The Agreement further states that “I agree that during the period of my
 27 employment by the Company I will not, without the Company’s express written consent, engage
 28 in any employment or business activity other than for the Company, and for the period of my

1 employment by the Company and for one (1) year after the date of termination of my
2 employment the Company I will not (i) induce any employee of the Company to leave the employ
3 of the Company or (ii) solicit the business of any client or customer of the Company (other than
4 on behalf of the Company).”

5 206. On information and belief, Chen, Jalan, Szeto, Han, Hwang, and Cheung have
6 breached their obligations under the Proprietary Information and Inventions Agreements by, *inter*
7 *alia*, using and disclosing Foundry Proprietary Information without Foundry’s (or Brocade’s)
8 permission or authorization in the development, implementation, marketing, and sale of A10’s
9 competing products; failing to assign to Foundry all right, title and interest in and to any and all
10 inventions made or conceived or reduced to practice during the period of their employment with
11 Foundry; using Foundry (or Brocade) Proprietary Information in the solicitation and hiring of
12 former Foundry and Brocade employees at A10; engaging in employment and/or business
13 activities for and on behalf of A10 during the period of their employment with Foundry (or
14 Brocade) and without Foundry’s (or Brocade’s) express written consent; covertly, and in a
15 manner that hid their actions, soliciting and inducing Foundry employees to leave the employ of
16 Foundry during and within one year of their respective departures from Foundry; and/or soliciting
17 the business of Foundry’s (or Brocade’s) customers and clients for and on behalf of A10.

18 207. Foundry and/or Brocade have performed all of their obligations under the
19 Agreements.

20 208. As a result of these breaches, Plaintiffs have been damaged in an amount to be
21 proven at trial.

22 **SEVENTEENTH CLAIM FOR RELIEF**
23 **(Breach of Fiduciary Duty Against Chen)**

24 209. Each of the foregoing paragraphs is incorporated in this Seventeenth Claim for
25 Relief as if fully set forth herein.

26 210. During the relevant time periods of his employment at Foundry, Chen was an
27 officer of Foundry.

28 211. Chen was entrusted by Foundry, in particular, with the responsibility of developing

1 new features for ServerIron and other Foundry products. Chen breached his fiduciary duties to
2 Foundry by, among other things, purporting to act on behalf of Foundry, when in reality he was
3 acting in furtherance of his own purposes, exploiting his position and Foundry's know how to
4 create his own company that would compete with Foundry; furthering his plot on Foundry's
5 company time and using Foundry resources to do so; inducing employees of Foundry to work in
6 furtherance of this scheme on Foundry's company time and through the use of Foundry's
7 company resources; covertly soliciting and/or inducing employees of Foundry to terminate their
8 employment at Foundry to join a competitor; stealing Foundry's corporate opportunities for
9 himself; not disclosing ideas, concepts, and inventions that he was obligated to disclose to
10 Foundry; and engaging in activities that created a conflict of interest with his employment.

11 212. For instance, despite his knowledge that Foundry was interested in adding security
12 features, Chen did not pursue that goal exclusively for Foundry. Instead he founded his own
13 competing company and stole ideas and business opportunities belonging to Foundry for his
14 competing company.

15 213. Because of defendants' actions, Foundry has lost valuable employees and has been
16 deprived of the corporate opportunity that Chen has taken for his own benefit. As a result,
17 Foundry has been damaged in an amount to be proven at trial, and Chen has been unjustly
18 enriched in an amount to be proven at trial. In addition, unless Chen and his company A10 is
19 restrained from continuing to market and sell the products created by usurping the corporate
20 opportunity that belonged to Foundry and using property and ideas owned by Foundry, Foundry
21 will be permanently and irreparably harmed. Foundry therefore requests and is entitled to
22 injunctive relief as described more fully in the Prayer for Relief below.

23 214. Chen's conduct was willful, malicious, fraudulent, and in conscious disregard of
24 Foundry's rights and interests and, upon information and belief, was undertaken with the intent to
25 injure Foundry's property and legal rights. Accordingly, an award of exemplary damages is
26 justified.

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EIGHTEENTH CLAIM FOR RELIEF

(Breach of Duty of Loyalty Against All Defendants Except A10 and Cheung)

215. Each of the foregoing paragraphs is incorporated in this Eighteenth Claim for Relief as if fully set forth herein.

216. Throughout their employment at Foundry, Chen, Jalan, Szeto, Han, and Hwang had a relationship with Plaintiffs as employees that gave rise to a duty of loyalty.

217. While still employed at Foundry, Chen, Jalan, Szeto, Han, and Hwang breached the duty of loyalty by working for Chen's competing company, A10 (including its predecessors OpTiMe and Raksha); purporting to act on behalf of Foundry when in reality they were acting in furtherance of A10; communicating with actual and prospective customers and vendors on behalf of A10; using Foundry's company resources for A10's benefit; disclosing Foundry's know how for A10's benefit; communicating with A10 employees with respect to technical issues to advance A10's competing business interests; and engaging in activities that created a conflict of interest with their employment at Foundry.

218. As a result, Plaintiffs have been damaged in an amount to be proven at trial.

219. The defendants' conduct was willful, malicious, fraudulent, and in conscious disregard of Plaintiffs' rights and interests and, upon information and belief, was undertaken with the intent to injure Plaintiffs' property and legal rights. Accordingly, an award of exemplary damages is justified.

NINETEENTH CLAIM FOR RELIEF

(Intentional Interference With Prospective Economic Advantage Against All Defendants)

220. Each of the foregoing paragraphs is incorporated in this Nineteenth Claim for Relief as if fully set forth herein.

221. Economic business relationships exist between Plaintiffs and their actual and prospective customers, including Yahoo! Inc., Comcast Corporation, and Verizon Communications Inc. These actual and prospective relationships involved sales of hundreds of Plaintiffs' ServerIron products for millions of dollars. In addition, Plaintiffs maintained cooperative relationships with its existing customers that involved the development of specific,

1 unique technologies to fit Plaintiffs' customers' needs.

2 222. The Defendants are and were aware of the existence of these relationships between
3 Plaintiffs and their actual and prospective customers as a result of their employment with
4 Plaintiffs.

5 223. The Defendants engaged in wrongful conduct designed to interfere with or disrupt
6 Plaintiffs' relationships with their actual and prospective customers, including by soliciting
7 Plaintiffs' actual and prospective customers in violation of the agreements with Foundry;
8 soliciting and hiring former Foundry and Brocade sales and marketing personnel in violation of
9 the agreements with Foundry and as a result of using and disclosing Plaintiffs' trade secrets and
10 proprietary information; using and disclosing confidential and proprietary Foundry and Brocade
11 sales, marketing, and customer information wrongfully acquired from Plaintiffs; and denigrating
12 the nature, performance, quality, and capabilities of Plaintiffs' technology, products, and services,
13 as well as the direction of Plaintiffs' businesses and strengths of their prospects.

14 224. The Defendants' acts were intentional and carried out for the purpose of disrupting
15 Plaintiffs' relationships with their actual and prospective customers.

16 225. As a result of the Defendants' intentional interference with Plaintiffs' prospective
17 economic advantage, Plaintiffs' relationships with their actual and prospective customers were in
18 fact disrupted and Plaintiffs have been damaged in an amount to be proven at trial.

19 226. In addition, the Defendants' conduct has permanently and irreparably harmed
20 Brocade. Brocade is therefore entitled to injunctive relief.

21 227. The Defendants' acts and conduct to disrupt Plaintiffs' prospective economic
22 advantage were carried out willfully, fraudulently, maliciously, and with wanton disregard of
23 Plaintiffs' rights, thereby entitling Plaintiffs to punitive damages to be proven at trial.

24 **TWENTIETH CLAIM FOR RELIEF**
25 **(Intentional Interference With Contract Against All Defendants)**

26 228. Each of the foregoing paragraphs is incorporated in this Twentieth Claim for
27 Relief as if fully set forth herein.
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1 229. On information and belief, the Defendants were aware of Plaintiffs' contracts with
2 their former employees, including but not limited to the individual defendants because, among
3 other things, each individual defendant signed an agreement as a condition of employment with
4 Foundry and were aware that the other former employees would have signed agreements as well.

5 230. The individual defendants and other former Foundry and Brocade employees who
6 left to work for A10 breached their obligations under the Proprietary Information and Inventions
7 Agreements by, *inter alia*, using and disclosing Plaintiffs' proprietary information without
8 Plaintiffs' permission or authorization in the development, manufacture and sale of A10's
9 competing products; failing to assign to Plaintiffs all right, title and interest in and to any and all
10 inventions made or conceived or reduced to practice during the period of their employment with
11 Foundry and Brocade; using Plaintiffs' Proprietary Information in the solicitation and hiring of
12 former Foundry and Brocade employees at A10; engaging in employment and/or business
13 activities for and on behalf of A10 during the period of their employment with Foundry and
14 Brocade and without Foundry's and Brocade's express written consent; covertly, and in a manner
15 that hid their actions, soliciting and/or inducing Plaintiffs' employees to leave the employ of
16 Foundry and Brocade during and within one year of their respective departures from Foundry and
17 Brocade; and/or soliciting the business of Plaintiffs' customers and clients for and on behalf of
18 A10.

19 231. On information and belief, the Defendants intentionally encouraged each other, as
20 well as other former Foundry and Brocade employees who had gone to work at A10, to use and
21 disclose Plaintiffs' proprietary information without Plaintiffs' permission or authorization in the
22 development, manufacture and sale of A10's competing products; to fail to assign to Plaintiffs all
23 right, title and interest in and to any and all inventions made or conceived or reduced to practice
24 during the period of their employment with Foundry and Brocade; to use Plaintiffs' proprietary
25 information to solicit and hire former Foundry and Brocade employees at A10; to engage in
26 employment and/or business activities for and on behalf of A10 during the period of their
27 employment with Foundry and Brocade and without Foundry's and Brocade's express written
28 consent; to solicit and/or induce Plaintiffs' employees to leave the employ of Foundry and

1 Brocade during and within one year of their respective departures from Foundry and/or Brocade,
2 while taking steps to hide their actions; and/or to solicit the business of Plaintiffs' customers and
3 clients for and on behalf of A10.

4 232. As a proximate result of the Defendants' conduct and the above described breach
5 of contract, Plaintiffs have suffered damages in an amount to be proven at trial.

6 233. In addition, the Defendants' conduct has permanently and irreparably harmed
7 Brocade. Brocade is therefore entitled to injunctive relief.

8 234. The Defendants' aforementioned conduct was willful, malicious, fraudulent, and
9 in conscious disregard of Plaintiffs' rights and interests, and, on information and belief, was
10 undertaken with the intent to injure Plaintiffs' property and legal rights. Accordingly, an award
11 of punitive damages is justified.

12 **TWENTY FIRST CLAIM FOR RELIEF**
13 **(Unfair Competition, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, Against All Defendants)**

14 235. Each of the foregoing paragraphs is incorporated in this Twenty First Claim for
15 Relief as if fully set forth herein.

16 236. The Defendants have engaged in unlawful, unfair, and fraudulent business acts.
17 The Defendants knowingly engaged in unfair competition within the meaning of California
18 Business & Professions Code § 17200 by, among other things, exploiting relationships with
19 Plaintiffs' employees to build a company to compete with Plaintiffs; developing and furthering
20 plans to build a competitive business while they were employed by Foundry and/or Brocade;
21 covertly soliciting and/or inducing Plaintiffs' employees to terminate their employment; stealing
22 and interfering with Plaintiffs' prospective economic relations; and using ideas, concepts, and
23 inventions that the Defendants were obligated to disclose and assign to Foundry and/or Brocade.

24 237. The Defendants also knowingly engaged in unfair competition within the meaning
25 of California Business & Professions Code § 17200 by making false and misleading statements to
26 Plaintiffs' actual and prospective customers about the nature and direction of Plaintiffs'
27 businesses and the quality, performance, features, and cost of Plaintiffs' technology, products,
28 and services. These actions deceive the public as to the true nature and quality of the products

1 marketed by the Defendants and the products marketed by Plaintiffs.

2 238. The Defendants knew that the conduct described above was improper and that they
3 were unlawfully, unfairly, and fraudulently competing with Plaintiffs when they sought to and did
4 perform the acts described above.

5 239. The unfair practices are continuing in that the Defendants continue to solicit
6 Brocade employees to leave Brocade and join A10; to interfere with Brocade's prospective
7 economic relations; to use ideas, concepts, and inventions that should have been disclosed and
8 assigned to Brocade; and to make false and misleading statements to Brocade's actual and
9 prospective customers regarding Brocade's business, technology, products, and services.

10 240. As a direct and proximate result of this conduct, the Defendants have actually
11 disrupted Plaintiffs' sales and customer relations and interfered with Plaintiffs' employee
12 relations, and unjustly profited therefrom, while damaging Plaintiffs.

13 241. Accordingly, Plaintiffs are entitled to restitution and the return of any ideas,
14 concepts, and inventions that should have been disclosed and assigned to them.

15 242. Brocade also is entitled to an injunction pursuant to Business & Professions Code
16 § 17203 to prevent the on-going acts described above.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs prays for judgment as follows:

- 19 1. For entry of judgment against the Defendants on all Claims for Relief;
- 20 2. For an injunction preliminarily and permanently prohibiting the Defendants and
21 A10's officers, agents, servants, employees, and all persons acting in concert with it and/or them,
22 from directly or indirectly:
- 23 a. Infringing, inducing the infringement of, and contributing to the infringing
24 of each and every one of the Patents-in-suit, including, but not limited to,
25 prohibiting the making, using, selling, and/or offering for sale within the United
26 States, and/or importing into the United States, any products and/or services that
27 infringe the Patents-in-suit;
- 28 b. Reproducing, distributing, publishing, placing in the market, or otherwise

1 infringing the Copyrighted Works, in whole or in part, or any derivative work
2 thereof, in any medium;

3 c. Acquiring, using, possessing, disclosing, conveying, or communicating to
4 any person any of Plaintiffs' trade secret or other valuable proprietary information;

5 d. Manufacturing, producing, offering for sale, selling, or conveying to any
6 person any products, systems or services produced, manufactured, or marketed
7 using Plaintiffs' trade secrets or other valuable proprietary information;

8 e. Inducing any current or former Foundry or Brocade employee to breach
9 any contract, unfairly promote A10 technology using Plaintiffs' proprietary
10 marketing information, disrupt any actual or prospective Brocade business
11 relationship, or leave his or her employment with Brocade by and through the use
12 of Plaintiffs' trade secrets and/or false and misleading statements regarding
13 Brocade;

14 3. For an injunction preliminarily and permanently requiring the Defendants, and
15 A10's officers, agents, servants, employees, and all persons acting in concert with it and/or them,
16 to return to Plaintiffs all copies of Plaintiffs' confidential, proprietary and trade secret information
17 in their possession, custody, and control, including without limitation, Foundry's copyrighted
18 software code, and to fully disclose, under penalty of perjury, the names and whereabouts of all
19 persons to whom, and all entities to which, such information has been further distributed by them;

20 4. For an order, pursuant to 17 U.S.C. § 503(a) and (b), and other applicable statutes
21 or laws, providing for the impoundment, destruction, or other reasonable disposition of all
22 complete or partial copies of the Copyrighted Works in the possession or control of the
23 Defendants, and a complete disclosure of the location of any such copies, including any put into
24 products sold or distributed by Defendants;

25 5. For compensatory damages in an amount according to proof;

26 6. For actual damages suffered as a result of the copyright infringement and any of
27 Defendants' profits that are attributable to the infringement, or at least statutory damages;

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1 7. For an award of treble damages for all claims for which treble damages are
2 authorized, and otherwise for the maximum enhancement allowed by law;

3 8. For an award of punitive damages;

4 9. For an award reflecting the amount by which the Defendants have been unjustly
5 enriched;

6 10. For costs of suit and reasonable attorneys' fees incurred herein;

7 11. For prejudgment and post judgment interest; and

8 12. For such other relief as the Court deems just and proper.

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Dated: April 29, 2011

ORRICK, HERRINGTON & SUTCLIFFE LLP

/s/ Fabio E. Marino /s/
FABIO E. MARINO
Attorneys for Plaintiffs
BROCADE COMMUNICATIONS SYSTEMS, INC.
AND FOUNDRY NETWORKS, LLC

JURY DEMAND

Plaintiffs demand a trial by jury as to all issues so triable.

Dated: April 29, 2011

ORRICK, HERRINGTON & SUTCLIFFE LLP

/s/ Fabio E. Marino /s/
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