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Cisco Systems, Inc. and Cisco Technology, Inc.
9

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 CISCO SYSTEMS, INC., a California
corporation, and CISCO
14 TECHNOLOGY, INC., a California
corporation,
15

16 Plaintiffs,

17 v.

18 BECCELA'S ETC., LLC, a California
limited liability company, ARBITECH,
19 LLC, a California limited liability
company; HONGKONG SELLSI
20 TECHNOLOGY CO., LTD. (doing
business as ZTON TECHNOLOGY CO.
21 LTD, and SHENZHEN ZTON
22 TECHNOLOGY CO. LTD, and
23 SHENZHEN QIAOZHOU
NETWORKING TECHNOLOGY CO.,
24 LTD.), a Chinese limited company, and
DOES 3-50,
25

26 Defendants.

Case No. 18-cv-00477-BLF (SVK)

**FIRST AMENDED COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF
FOR:**

- 1. TRADEMARK INFRINGEMENT, 15 U.S.C. § 1114;
- 2. TRADEMARK COUNTERFEITING, 15 U.S.C. § 1114;
- 3. FEDERAL UNFAIR COMPETITION, 15 U.S.C. § 1125;
- 4. DIGITAL MILLENNIUM COPYRIGHT ACT, 17 U.S.C. § 1201, *et seq.*;
- 5. CALIFORNIA FALSE ADVERTISING, CAL. BUS. & PROF. CODE § 17500 *et seq.*;
- 6. INDUCING BREACH AND INTERFERING WITH CONTRACT;
- 7. CONVERSION;
- 8. UNJUST ENRICHMENT; and,
- 9. CALIFORNIA UNFAIR BUSINESS PRACTICES, CAL. BUS. & PROF. CODE § 17200 *et seq.*

DEMAND FOR JURY TRIAL

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1 Plaintiffs Cisco Systems, Inc. (“CSI”) and Cisco Technology, Inc. (“CTI” and together
2 with CSI, “Cisco” or “Plaintiffs”) hereby complain and allege against Defendants Beccela Etc.,
3 LLC, dba BecTech Global and Tuksy (“BecTech”), Arbitech, LLC (“Arbitech” and together with
4 BecTech, the “Arbitech Defendants”), and HongKong Sellsi Technology Co., Ltd., dba
5 HongKong Sellsi, Zton Technology Co. Ltd., Shenzhen Zton Technology Co., Ltd., and Shenzhen
6 Qiaozhou Networking Technology, Co., Ltd. (“HongKong Sellsi”), and Does 3-50, inclusive
7 (collectively “Defendants”) as follows:

8 **I. INTRODUCTION**

9 1. As set forth in detail below, Cisco has uncovered a significant and willful
10 infringement scheme by Defendants, which involves the purchase and resale of counterfeit and
11 otherwise non-genuine and infringing “Cisco” branded products, offered to the public as new,
12 “factory sealed” genuine Cisco products. Customers purchasing such products are duped into
13 thinking that they are in fact getting a new, “factory sealed” genuine Cisco branded product for a
14 cut-rate price, causing significant harm not only to the duped customer, but also to Cisco, its
15 brand, and its established reputation for producing the highest quality networking communications
16 and information technology products and services. Defendants further trafficked in products,
17 technology and components that violate the Digital Millennium Copyright Act (“DMCA”), added
18 to modified products to circumvent Cisco’s software access controls. And to add further insult to
19 injury, in furtherance of their scheme, the Arbitech Defendants also knowingly, intentionally, and
20 routinely induced Cisco’s authorized resellers to breach their contracts with Cisco. Cisco’s
21 customers rely on Cisco products to run complex, critical and highly secured networks. But
22 counterfeit Cisco products can cause privacy and security vulnerabilities, data loss, network
23 downtime and substantial business interruption. Cisco brings this Action to protect Cisco
24 customers from receiving inferior counterfeit products, to put a stop to Defendants’ unlawful and
25 infringing conduct, to enjoin further unlawful and infringing conduct, and to recover full damages
26 for the significant harm they have caused.

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II. THE PARTIES

2. Plaintiff Cisco Systems, Inc., is, and at all times mentioned herein was, a California corporation, with its principal place of business at 170 W. Tasman Drive, San Jose, California 95134. Plaintiff Cisco Technology, Inc., is, and at all times mentioned herein was, a California corporation with its principal place of business at 170 W. Tasman Drive, San Jose, California 95134. CTI owns the trademarks used by CSI in marketing Cisco-branded products.

3. Defendant BecTech is, and at all relevant times was, a California limited liability company, operating in the County of Orange, in the State of California. During the time period relevant to this matter, Beccela Etc., LLC, did business as BecTech Global and as Tuksy. Becella Etc., LLC, is wholly owned by Arbitech LLC.

4. Defendant Arbitech, previously identified as DOE 1, is, and at all times mentioned herein was, a California limited liability company, with its principal business location in the County of Orange, California.

5. Defendant HongKong Sellsi, previously identified as DOE 2, is a business entity that, upon information and belief, is a Chinese Limited Company with its principal business location in Hong Kong, China. HongKong Sellsi conducts business throughout the United States, including within the State of California, by exporting counterfeit products to California and elsewhere in the United States, and engaging in sales transactions with resellers of Cisco products. Through this sales practice, HongKong Sellsi sells products to resellers in the state of California, including but not limited to the Arbitech Defendants. Cisco is informed and believes, and therefore alleges, that products sold by HongKong Sellsi to resellers in the United States are ultimately sold to end consumers within the State of California. Upon information and belief, Cisco alleges that during the time period relevant to this matter, HongKong Sellsi also did business as Zton Technology Co. Ltd., Shenzhen Zton Technology Co. Ltd., and Shenzhen Qiaozhou Networking Technology, Co., Ltd.

6. Cisco is currently unaware of the true names and capacities of Does 3 through 50, inclusive, whether individual, corporate, associate, or otherwise. Due to the surreptitious nature of Defendants’ actions, the identities of Does 3 through 50 have been concealed from Cisco,

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1 preventing Cisco from identifying them by name. After discovery, which is necessary to ascertain
2 the true names and capacities of Does 3 through 50, Cisco will amend this Complaint to show the
3 true names and capacities of these Doe defendants and allege the necessary identifying details.

4 7. Cisco is informed and believes, and thereon alleges, that each of the Defendants
5 designated herein as a Doe is legally responsible, in some manner, for the events and happenings
6 herein referred to, and legally caused damages to Cisco as herein alleged.

7 8. At all times relevant to this action, each defendant, including those fictitiously
8 named defendants, was the agent, servant, employee, partner, joint venturer, representative,
9 subsidiary, parent, affiliate, alter ego, or co-conspirator of the other defendants and was acting
10 within the scope of that agency, service, employment, partnership, joint venture, representation,
11 affiliation, or conspiracy, and each is legally responsible for the acts and omissions of the others.

12 9. Indeed, as alleged in further detail below, each Defendant played a necessary role
13 in the infringing distribution chain that ultimately resold counterfeit and otherwise infringing
14 Cisco branded products to the public. As such, each Defendant is jointly and severally liable for
15 the damages caused by the unlawful conduct.

16 **III. JURISDICTION**

17 10. This is an Action for violations of the Trademark Act of 1946, 15 U.S.C. §§ 1051
18 *et seq.* (the “Lanham Act”), violations of the Digital Millennium Copyright Act, 17 U.S.C. §§
19 1201 *et seq.* (“DMCA”), and related causes of action. This Court has original subject matter
20 jurisdiction over this Action pursuant to the provision of the Lanham Act, 15 U.S.C. § 1121, the
21 DMCA, 17 U.S.C. § 1203, as well as under 28 U.S.C. §§ 1331 and 1338(a) and (b).

22 11. This Court has supplemental subject matter jurisdiction over the pendent state law
23 claims under 28 U.S.C. § 1367, because these claims are so related to Cisco’s claims under federal
24 law that they form part of the same case or controversy and derive from a common nucleus of
25 operative facts.

26 12. This Court has personal jurisdiction over Defendants, who have engaged in
27 business activities in this district, misled consumers in this district, knowingly and purposefully
28 directed business activities at this district, and have committed tortious acts, knowing Cisco is a

1 resident of this district and would suffer any injuries in this district.

2 13. Cisco is informed and believes, and thereon alleges, that the Arbitech Defendants
3 are citizens and residents of the State of California, and/or are doing business in the State of
4 California, and/or participated in or undertook obligations or rights arising out of the subject
5 events and happenings herein referred to, engaged in actions or omissions, either intentional or
6 negligent, regarding the subject events and happenings herein referred to, and/or benefited unjustly
7 from the efforts, work, and goods of Cisco.

8 14. Cisco is informed and believes, and thereon alleges, that Defendant HongKong
9 Sellsi is doing business in the State of California, and/or participated in or undertook obligations
10 or rights arising out of the subject events and happenings herein referred to, engaged in actions or
11 omissions, either intentional or negligent, regarding the subject events and happenings herein
12 referred to, and/or benefited unjustly from the efforts, work, and goods of Cisco.

13 IV. VENUE AND INTRA-DISTRICT ASSIGNMENT

14 15. Venue is proper in this district, pursuant to 28 U.S.C. § 1391, because a substantial
15 part of the events or omissions giving rise to Cisco's claims occurred in this judicial district, and a
16 substantial part of the property that is the subject of the action is situated in this district. Venue is
17 further proper in this district, pursuant to 28 U.S.C. § 1400(a), as Defendants or their agents may
18 be found in this district.

19 16. In accordance with Civ. L.R. 3-2(c), this action is properly assigned on a District-
20 wide basis because it relates to Intellectual Property Rights.

21 V. FACTUAL ALLEGATIONS RELEVANT TO CISCO, ITS INTELLECTUAL 22 PROPERTY, AND DEFENDANTS' UNLAWFUL SCHEME

23 A. Cisco's Business And History

24 17. Founded in 1984, Cisco is the worldwide leader in developing, implementing, and
25 providing the technologies behind networking communications, and information technology
26 products and services. Cisco develops and provides a broad range of networking products and
27 services that enable seamless communication among individuals, businesses, public institutions,
28 government agencies, and service providers. Specifically, the thousands of engineers who work at

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1 Cisco develop and provide networking and communications hardware, software, and services that
 2 utilize cutting-edge technologies to transport data, voice, and video within buildings, across cities
 3 and campuses, and around the world.

4 18. Since its founding, Cisco has pioneered many of the important technologies that
 5 created and enabled global interconnectivity. During the past three decades, Cisco has invested
 6 billions of dollars, and the time and dedication of thousands of its engineers, in the research,
 7 development, and sale of industry leading networking and communications products and services.

8 19. Cisco has also built up tremendous goodwill and brand reputation among
 9 consumers, including corporate and government consumers, through significant investment in
 10 advertising, promoting, and delivering products, software, and services of the highest quality
 11 under Cisco’s trade name and the family of Cisco-related trademarks (the “Cisco Marks”). Cisco
 12 has used the family of Cisco Marks to identify goods and services as being genuine and
 13 authorized, and therefore, the Cisco Marks are well-recognized signifiers of Cisco’s best-in-class
 14 products, software, and services.

15 **B. Cisco’s Trademarks**

16 20. CTI owns all rights, title, and interest in the Cisco Marks, which are included on
 17 the Principal Register of the U.S. Patent and Trademark Office. The Cisco Marks are well-known.
 18 They are used in connection with Cisco’s networking hardware and software products and
 19 services. They include, but are not limited to, the following marks that are used in interstate
 20 commerce:

21 Mark	Registration Number	Registration Date
22 CISCO	1,542,339	June 6, 1989
23 CISCO SYSTEMS	1,996,957	August 27, 1996
24 CISCO	2,498,746	October 16, 2001
25 CISCO	3,759,451	March 9, 2010
26 CISCO	3,978,294	June 14, 2011
27 CISCO	4,263,591	December 25, 2012

28

1 21. The Cisco Marks are distinctive, having no meaning outside of their use by Cisco
2 in its course of business operations and in its advertising to distinguish its products and services.
3 Cisco uses the Cisco Marks to advertise through a wide variety of media including television,
4 radio, newspapers, magazines, billboards, direct mail, and web sites.

5 22. Cisco has attained one of the highest levels of brand recognition among consumers
6 due to its extensive advertising and promotional efforts and its continuous use of its core Cisco
7 Marks for the past three decades. As a result of Cisco’s longstanding and widespread use and
8 promotion of the Cisco Marks, Cisco customers around the globe have come to rely upon the
9 Cisco Marks to identify Cisco’s high-quality hardware, software, and services. Many of Cisco’s
10 products are purchased by the U.S. Government, the military, hospitals, and by other industries, in
11 critical and life-essential applications.

12 23. Cisco’s customers associate Cisco’s famous and well-known trademarks, including,
13 among others, CISCO and the Cisco Logo exclusively with Cisco and Cisco’s products and
14 services. When consumers encounter these marks and decide to purchase goods and services
15 identified by these marks, they expect to receive genuine Cisco products that have been produced
16 by Cisco. Moreover, when consumers purchase products that are advertised as “new factory
17 sealed,” they believe that they are purchasing genuine products manufactured by Cisco that have
18 not been tampered with from the time the product was sealed in its shipping packaging. Thus,
19 knowing that these products are not actually “new factory sealed” would be highly relevant and
20 material to a consumer’s purchasing decision.

21 **C. Counterfeit And Otherwise Materially Different “Cisco” Products**

22 24. Counterfeit products that bear markings similar to the Cisco Marks provide
23 customers with a false assurance that the products they have purchased (1) are reliable and
24 conform with Cisco’s high standards, (2) come with applicable warranties, (3) can be placed under
25 a Cisco service support contract (*i.e.*, SMARTnet) without the need for payment of extra amounts
26 for inspection and relicensing, and (4) come with all of the necessary accessories sold with the
27 product that have been selected and approved by Cisco for use with the product.

28 25. In addition to harm to customers, the sale of counterfeit Cisco products also harms

1 Cisco in many ways. Among these, counterfeit Cisco products which fail or degrade create the
2 false impression that Cisco products are unreliable, thereby improperly tarnishing Cisco's
3 reputation and causing Cisco to suffer lost sales and future business opportunities. When
4 customers purchase Cisco-branded parts that are counterfeit and unreliable, their image of Cisco is
5 diminished and Cisco's opportunity to sell genuine, high-quality products to those customers may
6 be lost forever. As a result, Cisco suffers substantial and irreparable harm to its brand, image,
7 business, and goodwill with the public. Cisco also suffers lost sales when customers purchase
8 counterfeit products instead of genuine Cisco products.

9 26. Cisco and its customers are also harmed when high-quality Cisco-authorized
10 accessories and/or components are replaced with accessories/components of unknown quality by
11 counterfeiters or other unauthorized resellers. Cisco-authorized accessories/components,
12 including power cords, are high-quality and function properly with the corresponding Cisco
13 product and operate safely for the region that the product is intended to be sold.
14 Accessories/components from various third party suppliers often work together in one functioning
15 unit. Not only does Cisco need to assess each particular accessory/component, but Cisco also
16 conducts an end-to-end technical and safety assessment once the various components and other
17 accessories are configured and working together.

18 27. Cisco switches and similar products that are sold outside the United States include
19 power cords that are specific to the region or country in which the product is sold. Cisco carefully
20 selects power cords that provide reliable, safe electricity to the product. Using unapproved power
21 cords injects a degree of uncertainty into the safe use of Cisco products. Given the importance of
22 safety and reliability of Cisco products, there is no doubt that the difference between Defendants'
23 use of unauthorized, unsafe and/or unoriginal power cords and the use of the original, high quality
24 power cord would be highly relevant and material to a consumer's purchasing decision.

25 **D. Cisco's Copyrights and Protection of Access to Software**

26 28. Cisco has also expended significant resources and effort to research and develop
27 world-class software products that enable, enhance, and interoperate with its high-quality
28 hardware. CTI has caused numerous Cisco software copyrights to be registered with the U.S.

1 Copyright Office in connection with a range of telecommunications, computer hardware and
 2 software products and services, and CTI owns all rights, title, and interest in these CISCO federal
 3 copyrights, including but not limited to:

Title	Copyright Number	Date
Cisco IOS 12.0	TXu001036064	2002
Cisco IOS 12.1	TXu001036066	2002
Cisco IOS 12.2	TXu001036065	2002
Cisco IOS 12.3	TXu001188975	2004
Cisco IOS 12.4	TXu001259162	2005
Cisco IOS 15.0	TX0007938524	2009
Cisco IOS 15.1	TX0007938525	2010
Cisco IOS 15.2	TX0007937159	2011
Cisco IOS 15.4	TX0007938341	2013
Cisco IOS XE 2.1	TX0007937240	2008
Cisco IOS XE 3.5	TX0007937234	2011

12 29. The above software copyright registrations includes software for the CISCO
 13 Catalyst switches referred to in the Complaint below.

14 30. CISCO has instituted certain technological measures to control access to its
 15 copyright-protected software, including the software identified above. One of those technological
 16 measures is the use of authentication checks that control access to the Cisco copyright protected
 17 software on genuine Cisco products.

18 **E. Cisco's Warranty and Support Programs**

19 31. Cisco supports its products through several means, including: (1) a warranty
 20 program that varies based on the product, ranging from 90 days to a limited lifetime warranty
 21 ("Warranty"), and (2) a more comprehensive suite of service and support offered to customers for
 22 a fee, collectively called SMARTnet Service ("SMARTnet"). The Cisco Warranty is non-
 23 transferable and is provided solely to the original End User of the equipment. A SMARTnet
 24 contract entitles the holder of the contract to receive software updates and upgrades for the
 25 hardware that is covered by the contract, access to Cisco's Technical Assistance Center ("TAC"),
 26 and oftentimes advance replacement of the product if it fails and TAC cannot assist the customer
 27 to make it operational. Cisco SMARTnet contracts are available to the original End User of the
 28

1 product, unless the product is inspected and re-licensed by a subsequent End User, in which case
 2 the subsequent End User is entitled to purchase a SMARTnet contract. Only Authorized Channel
 3 Partners are permitted to sell SMARTnet contracts, and then only to End Users for products
 4 purchased through Cisco’s authorized sales channel. As the Arbitech Defendants know,
 5 Authorized Channel Partners would be violating their contract with Cisco if they were to sell a
 6 SMARTnet contract to another reseller, like the Arbitech Defendants.

7 **F. Cisco’s Sales and Distribution Channels**

8 32. Cisco is one of the United States’ largest and most innovative companies. The
 9 volume of Cisco’s yearly sales revenue of hardware, software, and related services is
 10 approximately \$50 billion dollars world-wide. In order to support this global market, for the great
 11 majority of its sales, Cisco relies upon a system of independent distributors and resellers located
 12 throughout the world. This system is commonly used in the IT hardware and networking industry.
 13 These independent distributors and resellers, referred to as “Authorized Channel Partners” or
 14 “Authorized Resellers,” typically represent several other equipment manufacturers, in addition to
 15 Cisco. Among other things, Cisco’s distribution system allows it to maintain expertise and a local
 16 presence in regions of the world where there would not otherwise be sufficient business to support
 17 it.

18 33. Authorized Resellers are required to enter into contractual relationships with Cisco
 19 that allow them to purchase Cisco products and services at a partner discount from Cisco’s
 20 authorized distributors. The most common contractual relationship is called an Indirect Channel
 21 Partnership Agreement (“ICPA”). This agreement requires Authorized Resellers to purchase
 22 Cisco products and services only from Cisco or authorized distributors and to sell those products
 23 and services only to end customers for their internal use (“End Users”). Cisco incorporates the
 24 ICPA in this Complaint by this reference, as if set forth here in full. A true and correct copy of the
 25 current ICPA is attached as Exhibit A.

26 34. Cisco’s Authorized Resellers are the direct interface with the customers who use
 27 Cisco’s products and services. Cisco’s Authorized Resellers identify sales opportunities, provide
 28 technical assistance in selecting products, recommend solutions to address their customers’ unique

1 needs, conduct pre-sales and sales support, supply the needed products, and providing post-sales
2 support for the products.

3 **G. Misleading Marketing and Advertising**

4 35. BecTech operates a website at www.bectechglobal.com. On July 10, 2017, the
5 “About Us” page on the BecTech website claimed that they “have developed powerful
6 partnerships with industry leading suppliers to ensure that our clients have immediate access to the
7 most current technologies at the very best prices.” Contrary to the implication of this statement,
8 BecTech is not a member of Cisco’s channel sales organization, and is not a Cisco “partner.”
9 Indeed, Cisco has never had any contractual relationship with BecTech.

10 36. BecTech stated on the “Returns” page of its website that they accepted returns
11 within 30 days of receipt. BecTech does not disclose that the Cisco products it sells do not come
12 with a manufacturer warranty. While not disclosed, knowing the difference between Cisco’s
13 warranty and support and the inferior warranty and support provided by the Arbitech Defendants
14 would be highly relevant and material to a consumer’s purchasing decision.

15 37. BecTech also operates a storefront on Amazon.com. On July 10, 2017, BecTech
16 made the same misleading claim on the Amazon storefront that it had “powerful partnerships with
17 industry leading suppliers.”

18 38. BecTech also operates a storefront on eBay. On July 10, 2017, BecTech advertised
19 37 separate Cisco products on the eBay store. All except for four products were advertised as
20 “BRAND NEW FACTORY SEALED.” On information and belief, Cisco asserts that some or all
21 of these products were not in fact factory sealed, but had been opened and modified prior to
22 delivery to customers.

23 **H. Arbitech’s History Of Unlawful Importation And Sales Activity**

24 39. On or around August 26, 2011, Arbitech sold four “Cisco” WS-C3750X-48T-S
25 switches to another reseller. The switches were then drop-shipped to the end customer, CPI
26 Aerostructures Inc., which according to its website is involved in the “contract production of
27 structural aircraft parts principally for the U.S. Air Force and other branches of the U.S. armed
28 forces, either as a prime contractor or as a subcontractor for other defense prime contractors.” On

1 January 4, 2012, the reseller submitted a service request to Cisco’s Technical Assistance Center,
2 because one of the switches was no longer working correctly. Based on the review of the
3 electronic information taken from that switch, Cisco was able to determine that it had been
4 manufactured as a different model of switch, with a different serial number. Thus, it was a
5 counterfeit unit and was not eligible for support. Cisco contacted Arbitech on February 2, 2012,
6 and demanded that Arbitech cease selling counterfeit Cisco products. Arbitech identified its
7 source for the switch, but refused to provide information about any other sales of “Cisco” products
8 to the same reseller.

9 40. On July 18, 2014, Cisco sent a letter to Arbitech detailing activity related to
10 Arbitech transacting illegal business with Cisco partners. The letter specifically highlighted
11 Cisco’ contractual relations with its sales partners and demanded that Arbitech cease inducing the
12 partners to breach their contracts with Cisco:

13 Cisco demands that Arbitech immediately cease its fraudulent business practices.
14 As Arbitech is aware, Cisco maintains a channel sales organization, with
15 authorized Tier One partners (distributors) and authorized Tier Two partners.
16 Arbitech must cease inducing Cisco’s partners to breach their contractual relations
with Cisco, such as by misleading Cisco as to the identity of their customer and to
obtain undeserved discounts for sale of products to Arbitech.

17 41. On or about June 22, 2016, U.S. Customs and Border Protection (“CBP”) seized
18 two counterfeit “Cisco” switches that were being imported by Arbitech. The model numbers for
19 the switches were WS-C3750X-24S-S and WS-C2960X-48TD-L. The exporter of those
20 counterfeit switches was “Bonnie Liu, 8/F, Ho King, Commercial Centre, 2-16 FA, Yuen Street,
21 Mongkok, LK, HK.” Counsel for Cisco contacted counsel for Arbitech on March 3, 2017,
22 demanding that Arbitech (1) cease importing counterfeit “Cisco” products, (2) identify the seller
23 of the counterfeit products seized by CBP, and (3) quarantine any “Cisco” products from that same
24 source and allow Cisco engineers to examine them. Cisco offered to have the analysis be done via
25 photograph to minimize the disruption on Arbitech. Counsel for Arbitech responded on March 10,
26 2017, identifying that Arbitech purchased the products from “Bonnie Liu” from HongKong Sellsi.

27 42. On April 20, 2017, counsel for Cisco contacted Arbitech regarding sales by
28 Arbitech to an authorized Cisco channel sales partner, Zunesis, of two N3K-C3548P-10GX Cisco

1 switches that were potentially stolen or counterfeit. The switches were sold by Zunesis to end
2 customer One Nevada Credit Union on or about March 10, 2017. Because Zunesis had purchased
3 these switches from Arbitech—that is, outside of Cisco’s authorized distribution system in
4 violation of the channel sales partner’s contractual obligations—Zunesis recalled the switches
5 from the credit union. However, the switches were shipped by Zunesis to Arbitech on March 17,
6 so Cisco requested that Arbitech quarantine the switches so they could be examined to determine
7 if they were counterfeit. Arbitech was alerted, once more, that sales by an unauthorized source
8 such as Arbitech to a Cisco channel sales partner induced the partner to violate its contractual
9 relationship with Cisco:

10 We also need to discuss Arbitech’s sale of Cisco products to Cisco channel
11 partners. As you know, Cisco channel partners are contractually prohibited from
12 purchasing Cisco products from an unauthorized source, and Arbitech is not an
13 authorized source (Cisco or one of Cisco’s channel distributors). This situation
14 underscores the importance of this contractual obligation, because the end
15 customer (One Nevada CU) presumably believed that the products it purchased
16 from a Cisco partner were sourced from Cisco’s channel distribution system and
17 came with full Cisco warranties and ability to be placed under a Cisco SMARTnet
18 contract, but that is not the case when a Cisco partner violates its contractual
19 obligations in purchasing Cisco products from an unauthorized source.

20 43. On April 20, 2017, Frank Llaca, Arbitech’s president, responded and said that
21 Arbitech had the switches and would keep them in quarantine pending resolution of the matter
22 with Cisco. On April 27, Cisco requested Arbitech to send the switches to Cisco for examination.
23 “Once the examination is complete, we will share the results with you. If the switches are
24 authentic, Cisco will return them to you. If they are counterfeit, Cisco would expect to keep them
25 and would expect you to share your vendor information (such as the Purchase Order). Is that
26 agreeable?” Mr. Llaca proposed on May 9 that Arbitech would send the switches to Cisco only if
27 Cisco provided a legal release related to the switches, and agreed to pay Arbitech \$18,300 (the list
28 price for the switches) each if they turned out to be authentic. On May 19, Cisco confirmed that it
did not need to examine the products, as further review indicated that they had been sold in China
and diverted from the original end customer. Cisco requested Arbitech’s cooperation in providing
information about the seller of the switches so that Cisco could investigate the matter in China.

1 On May 22, Llaca informed Cisco that Arbitech would not provide the requested information
2 regarding these switches, which had been diverted from the original end customer.

3 44. In further support of the willful and intentional nature of the infringement by the
4 Arbitech Defendants, on June 19, 2017, counsel for Cisco sent a letter to counsel for Arbitech
5 regarding the importance of avoiding the sale of counterfeit “Cisco” products and offering to
6 provide a means for Arbitech to check products to determine if they are likely counterfeit. “We
7 have engaged on behalf of our respective clients with respect to the history of Arbitech selling
8 counterfeit Cisco products. As everyone recognizes, because of the health and safety issues
9 implicated by counterfeit Cisco products, and the fact that Cisco products are commonly found in
10 sensitive national infrastructure (such as government installations, banks, hospitals, and other
11 sensitive locations), it is imperative that counterfeit Cisco products be identified and removed
12 from the stream of commerce.” With regard to the technology to check for counterfeits, the
13 system was described to Arbitech:

14 Cisco is considering developing and making available a system that would permit
15 Arbitech and others to provide the serial number and other pertinent information
16 about Cisco products in its possession, and to obtain a near-instant response
17 indicating whether the product is potentially counterfeit or presumptively genuine.
18 Such as [sic] system would allow Arbitech to check in real time all of their Cisco
19 products to confirm their presumptive authenticity, before sending the product to
20 the customer. It would be expected that Arbitech would use the system to check
21 all of their Cisco products, not just a narrow subset of Cisco products, and the
22 speed of using the system would allow Arbitech to do so without unnecessary
23 burden. Please let us know whether Arbitech would be willing to provide product
24 information (including the Product ID and serial number) to Cisco for such
25 authentication. If so, we can have a further discussion about the details of the
26 proposed system.

27 45. On July 5, 2017, counsel for Arbitech responded, stating that Arbitech would not
28 use the tool that Cisco was considering developing to check whether Cisco products were
counterfeit before selling them. Accordingly, the Arbitech Defendants opted for willful blindness
as to the counterfeit nature of Cisco products that they are reselling.

29 I. **Sales Of Counterfeit Cisco Products By HongKong Sellsi Into The United States**

30 46. Between March 2015 and November 2017, CBP seized products bearing

1 counterfeit CISCO Marks being exported into the United States by HongKong Sellsi on at least 32
2 occasions. A list of the known seizures is below:

3	Seizure Notice #	Date of Import	Description	Product Model Number Connected to Seizure (if known)	Exporter
4	2015-2095-101477-01	3/25/2015	"(2) Network Switches"		HK Xjiong Technology Co., Ltd. 8/F Ho King Commercial Center, 2-16 Fa Yuen Street, Mongkok, KL Hong Kong
5	2016-0903-000515-01	5/30/2016	"Four (4) Cisco Catalysts (2960X)"	WS-C2960X-48FPD-L	Juvin Zhu 10 F, Ho King, Commercial Centre Hong Kong, Hong Kong
6	2016-0903-000517-01	6/6/2016	"Two (2) Cisco Catalysts (2960X)"		Nina Hu 10 F, Ho King, Commercial Centre Hong Kong, Hong Kong
7	2016-0903-000578-01	7/11/2016	Two (2) Cisco Transceiver Modules (SFP-10G-LR) and Fifteen (15) Cisco Transceiver Modules (SFP-10G-SR)	Two (2) SFP-10G-LR Fifteen (15) SFP-10G-SR	Elle Guo Avenue 6, Ho King, Commercial Centre Mongkok, Kowloon, Hong Kong
8	2016-2791-000472-01	5/12/2016	"Cisco Network Switches"		Susan Sun 2-12 Fa Yuen Street Mongkok, Hong Kong HK
9	2016-2791-000475-01	5/10/2016	"Counterfeit Cisco Transceivers Modules"	10 GLC-LH-SM 5 SFP-10G-LR 40 mGLC-T 40 GLC-SX-MMD	Bonnie Liu 6/F Ho King Commercial Center 2-12 FA Yuen Street Mongkok Kowloon, Hong Kong
10	2016-2795-100122-01	6/22/2016	"Counterfeit Cisco Network Switches"		Bonnie Liu 8/F, Ho King Commercial Center 2-12 FA Yuen Street Mongkok Kowloon, Hong Kong
11	2016-3501-000393-01	7/5/2016	Five (5) each "Counterfeit Cisco Network Switch"		Sun Shan 6/F Ho King Commercial Center 2-12 FA Yuen Street Mongkok Kowloon, Hong Kong

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Seizure Notice #	Date of Import	Description	Product Model Number Connected to Seizure (if known)	Exporter
2016-3501-000394-01	7/5/2016	Five (5) each "Counterfeit Cisco Network Equipment"		Sun Shan 6/F Ho King Commercial Center 2-12 FA Yuen Street Mongkok Kowloon, Hong Kong
2016-3501-000425-01	8/4/2016	Three (3) each "Counterfeit Cisco Network Switch"		Sun Shan 6/F Ho King Commercial Center 2-12 FA Yuen Street Mongkok Kowloon, Hong Kong
2016-3501-000427-01	8/4/2016	Two (2) each "Counterfeit Cisco Network Switch"		Sun Shan 6/F Ho King Commercial Center 2-12 FA Yuen Street Mongkok Kowloon, Hong Kong
2016-3501-000428-01	8/4/2016	Four (4) each "Counterfeit Cisco Network Switches"		3/F, Ho King, Commercial Centre Hong Kong, Hong Kong
2016-4197-103162-01	7/19/2016	"Thirty (30) Cisco Modules"		Ying Chu 10/F, Ho King, Commercial Centre Hong Kong, Hong Kong
2016-4197-104046-01	9/19/2016	"Six Cisco Modules WS-C2960X-48LPS-L"	WS-C2960X-48LPS-L	Susan Sun 6/F Ho King Mongkok, Hong Kong
2016-4197-104061-01	9/22/2016	"1 Cisco Switch"		Bonnie Liu 9/F Ho King Commercial Center Mongkok, Hong Kong
2016-4197-104067-01	9/22/2016	"2 Cisco Switch"		Tina Cai 9/F Ho King Mongkok, Hong Kong
2017-2095-101345-01	11/10/2016	"(5) Counterfeit Cisco Networking Switches"		Zoe Tu 9/F Ho King Commercial Center 2-12 FA Yuen Street Mongkok Kowloon, Hong Kong
2017-2095-101356-01	11/10/2016	"(5) Counterfeit Cisco Networking Switches"		Cathy Yuen 9/F Ho King Commercial Center 2-12 FA Yuen Street Mongkok Kowloon, Hong Kong

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Seizure Notice #	Date of Import	Description	Product Model Number Connected to Seizure (if known)	Exporter
2017-2095-101357-01	11/10/2016	"(2) Counterfeit Cisco Switches"		Zoe Tu 9/F Ho King Commercial Center 2-12 FA Yuen Street Mongkok Kowloon, Hong Kong
2017-3195-000100-01	1/17/2017	"Cisco Network Chassis"		Hellen Lee Flat Rm T78 G/F Bonham Strand West, Shung Wan HK Hong Kong
2017-3195-000107-01	1/17/2017	"network chassis"		Mary Sun Flat Rm T78 G/F Bonham Strand West, Shung Wan HK Hong Kong
2017-3195-000113-01	1/17/2017	"network chassis"		Tracy Lee Flat Rm T78 G/F Bonham Strand West, Shung Wan HK Hong Kong
2017-4196-100210-01	11/29/2016	"5 Counterfeit Cisco Switches WS-C2960X-48TD-L"	WS-C2960X-48TD-L	Bonnie Liu 15 F Hoking Commercial Ctr. 2-16 Fa, Mong Kok, Hong Kong
2017-4196-100211-01	11/15/2016	"One Cisco Switch WS-C2960XR-24PD-L"	WS-C2960XR-24PD-L	Bonnie Liu 15/F Hoking Commercial Ctr. 2-16 Fa, Mong Kok, Hong Kong
2017-4196-100295-01	12/12/2016	19 Counterfeit Cisco Switches		Bonni Liu Rm. 208 Luk Yu Bldg., Central Hong Kong
2017-4197-1000880-01	10/20/2016	"6 Cisco Switch W-C2960X-48FPS-L"	WS-C2960X-48FPS-L	Bonnie Liu 9/F Ho King Mongkok, Hong Kong
2017-4197-100090-01	10/21/2016	"5 Counterfeit Cisco WS-C2960X-48FPS-L"	WS-C2960X-48FPS-L	Ray Tang 9/F Jo King Commercial Center Mongkok, Hong Kong
2017-4197-100176-01	11/3/2016	"5 Cisco Switches WS-C2960X-48FPS-L"	WS-C2960X-48FPS-L	Tina Cai 9/F Ho King Commercial Center Mongkok, Hong Kong
2017-4197-100754-01	12/17/2016	"3 Cisco Switch WS-C3560X-48T-S"	WS-C3560X-48T-S	Bonnie Liu RM 401 BLK A 413 Castle Peak Rd. Hong Kong

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Seizure Notice #	Date of Import	Description	Product Model Number Connected to Seizure (if known)	Exporter
2017-4197-103020-01	6/17/2017	"39 Counterfeit Cisco Modules"		Bonnie Liu Flat Rm C 18/F, Wan Chai, Hong Kong
2017-4197-103472-01	8/1/2017	"2 Cisco Switches WS-C2960X-48TS-L"	WS-C2960X-48TS-L	Bonny Liu Flat 4 18/F Block 8 Shatin, Hong Kong
2018-4197-100575-01	11/21/2017	"1 Counterfeit Cisco Switch"		Bonny Liu 18/F New Trade Plaza Hong Kong, Hong Kong

47. HongKong Sellsi—using the name Zton Technology Co., Ltd.—sold “Cisco” products to a reseller in New Jersey. Cisco obtained information about the products from the reseller, including the Product ID (PID), serial number, date of purchase, and price. Many of the products matched a criteria that strongly suggests that they were counterfeit: (1) commonly counterfeited PIDs, and (2) sold as “new” for less money than Cisco sold the actual serial number unit, or the serial number was invalid. In 2016 and 2017, HongKong Sellsi sold the following PIDs that fit the counterfeit criteria to the New Jersey reseller: C3KX-NM-10G, C3850-NM-8-10G, WS-C2960S-24TS-L, WS-C2960S-48FPD-L, WS-C2960S-48FPS-L, WS-C2960S-48LPS-L, C2960X-STACK, WS-C2960X-48FPD-L, WS-C2960X-48FPS-L, WS-C2960X-48LPD-L, WS-C2960X-24TD-L, WS-C2960X-48TD-L, WS-C2960XR-24PD-I, WS-C2960XR-48FPD-I, WS-C2960XR-48LPD-I, WS-C3650-24PD-S, WS-C3650-24PS-S, WS-C3650-48TD-L, WS-C3850-24S-E, WS-C3850-48T-S, WS-C3850-24S-S, WS-C3850-24T-S, WS-C3850-48T-L, and WS-C3850-48T-S. Cisco is informed and believes, and thereon alleges, based on the attributes set forth above that these units were all very likely counterfeit.

48. In 2015 and 2016, HongKong Sellsi—using the name Shenzhen Zton Technology Co. Ltd.—sold “Cisco” products to a different reseller in New Jersey. Cisco obtained information about the products from the reseller, including the Product ID (PID), serial number, date of purchase, and price. Many of the products matched the counterfeit criteria described above,

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1 including units in the following PIDs: C2960X-STACK, VS-S720-10G-3C, WS-C2960S-24TS-L,
2 WS-C2960S-48FPS-L, WS-C2960S-48LPS-L, WS-C2960S-48LPD-L, WS-C2960S-48TS-L,
3 WS-C2960X-24PD-L, WS-C2960X-48FPD-L, WS-C2960XR-48FPD-I, WS-C2960XR-48TD-I,
4 WS-C3560X-48P-S, WS-C3560X-48T-E, WS-C3650-24TS-E, WS-C3750X-12S-E, WS-
5 C3750X-24P-S, WS-C3750X-24T-E, WS-C3750X-48T-E, and WS-C3850-48P-S. Cisco is
6 informed and believes, and thereon alleges, based on the attributes set forth above that these units
7 were all very likely counterfeit.

8 49. As alleged in more detail above, on or about June 22, 2016, U.S. CBP seized two
9 counterfeit “Cisco” switches that were being imported by Arbitech. The model numbers for the
10 switches were WS-C3750X-24S-S and WS-C2960X-48TD-L. Arbitech identified that HongKong
11 Sellsi was the company that sold it the counterfeit switches that were seized by CBP.

12 50. In addition, HongKong Sellsi sold WS-C2960X-48FPS-L switches to Arbitech in
13 March 2016. One of those switches was sold by BecTech to a Cisco investigator in April 2016
14 (discussed below, at paragraph 51). Even though Arbitech claims on its website that each item
15 that it resells “undergoes rigorous inspection,” Cisco engineers examined the product and
16 determined that it is counterfeit, and that it had been modified to circumvent controls by Cisco to
17 prevent unauthorized access to copyrighted software, as set forth in more detail below.

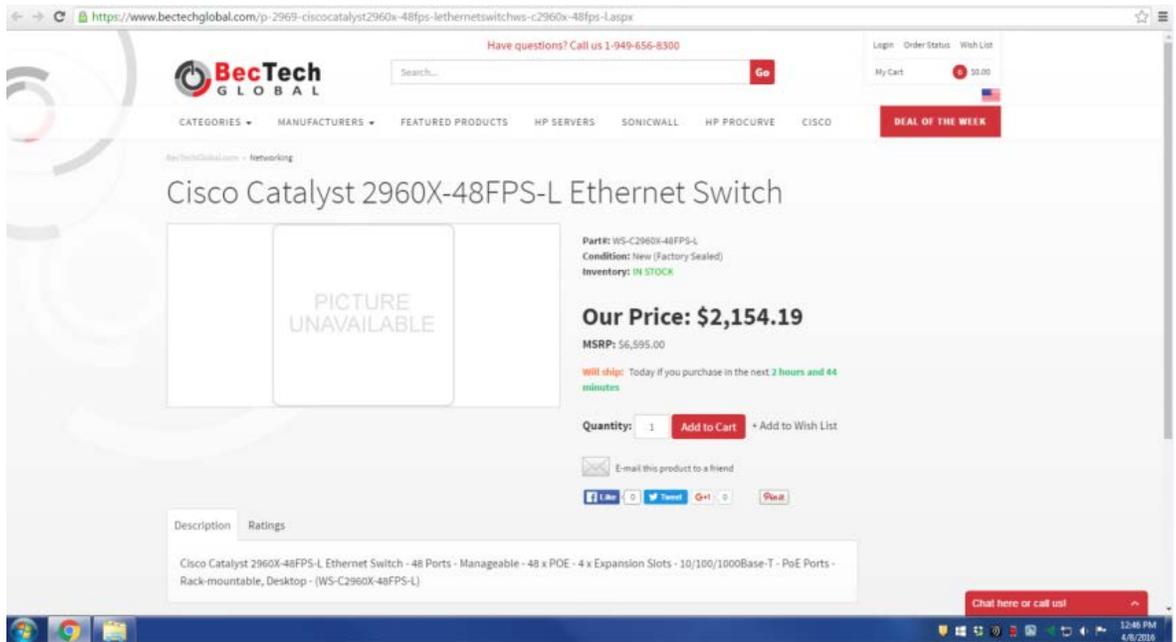
18 51. HongKong Sellsi obtained partnership status from Cisco at various times, and
19 utilized that status to create an impression of legitimacy. HongKong Sellsi Technology Co. was a
20 Cisco authorized channel partner, prior to August 2014. Cisco terminated it as a partner in
21 November 2015. In March 2016, HongKong Sellsi re-registered as a Cisco partner, using the
22 alternate name of Sellsi Technology Co. “Sellsi Technology Co.” ceased being a Cisco partner in
23 August 2018. Zton Technology Co., Ltd., was a Cisco authorized channel partner, prior to August
24 2017. Cisco denied its attempt to renew its partnership in July 2018 and Cisco placed the
25 company on the Denied Parties List in August 2018.
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1 **1. Further Violations and Illegal Conduct By Defendants**

2 **a. Sale of Counterfeit Switch in April 2016**

3 52. An investigator engaged by Cisco made a purchase on or about April 8, 2016, from
4 BecTech Global’s online store (www.bectechglobal.com), of a Cisco WS-C2960X-48FPS-L
5 switch, within the Northern District of California. BecTech advertised the switch as “New
6 (Factory Sealed)” at a steep discount from Cisco’s Global List Price:



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10 53. Cisco is informed and believes, and thereon alleges, based on the apparent lack of
11 any invoice between Arbitech and BecTech, that Arbitech is the actual entity that managed and
12 fulfilled the sale of the switch, even though BecTech offered it for sale and made the actual sale.
13 The switch (serial number FCW1841A7BG) was sent by the Arbitech Defendants to the
14 investigator in Berkeley, California, within the Northern District of California. Plaintiffs are
15 informed and believe that this counterfeit switch was sold by HongKong Sellsi to Arbitech in
16 March 2016.

17
18 54. The switch was examined by Cisco engineers, who determined that it was
19 counterfeit. The product appears to have been originally manufactured as a lower grade product (a
20 24 port Catalyst 2960-X series switch) and then modified post-manufacture without Cisco’s
21

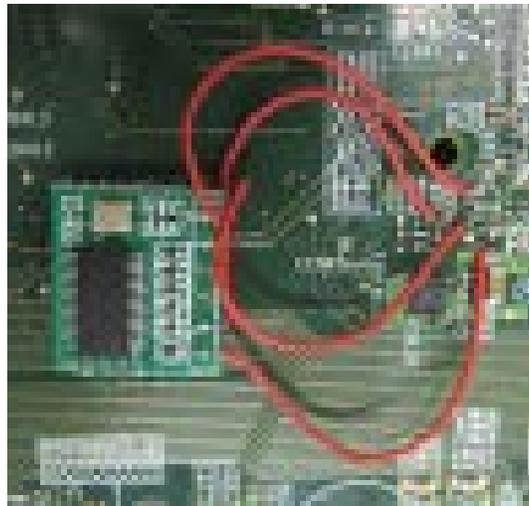
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1 consent to be sold as a more expensive product (a 48 port Catalyst 2960-X switch). To
2 accomplish this, Defendants added an unapproved component for the 48 port interface to the
3 original switch:



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7 This additional component is non-standard and has different components and different component
8 layout from a genuine Cisco board. This unapproved component is materially different from a
9 genuine Cisco part, and has not undergone the rigorous testing that genuine Cisco parts undergo in
10 order to meet Cisco’s high manufacturing and quality control standards. Using an unapproved
11 component renders these products as a whole counterfeit, non-genuine, and materially different
12 from a genuine Cisco 48 port Catalyst 2960-X switch. Obviously these modifications also meant
13 that Defendants also falsely claimed that this product was “New (Factory Sealed).”

14 55. In addition, this counterfeit switch had another implanted component, whose
15 function was to bypass Cisco’s software authentication processes, which run during bootup.
16 Cisco’s software authentication processes are technological measures that effectively control
17 access to Cisco’s copyright protected software. The component was connected to the Cisco
18 product using soldered red wires, in a substandard manufacturing method that is significantly
19 inconsistent with Cisco’s high manufacturing and quality control standards:
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1 Thus, by adding this component, whose function and purpose it was to circumvent the access
2 controls to Cisco's copyrighted software, Defendants manufactured, imported, offered to the
3 public, provided, or otherwise trafficked in a technology, product, service, device, component, or
4 part thereof, that is primarily designed or produced for the purpose of circumventing Cisco's
5 technological protection measures that effectively control access to its copyrighted software and to
6 thereby allow third parties to access Cisco's Copyrighted Works without authorization.

7 56. The packaging and labels further constitute both false designations of origin,
8 misrepresenting the product as being approved, endorsed, and authorized by Cisco, and also false
9 and misleading representations/descriptions of fact as to the product itself. Such false and
10 misleading designations and representations are likely to cause confusion, mistake, and deception
11 among members of the trade and the general consuming public as to the origin, sponsorship,
12 approval and quality of Defendants' counterfeit and/or otherwise infringing products.

13 57. Reselling materially-altered Cisco branded products with these non-genuine
14 components slapped on has undermined, and continues to undermine, Cisco's supply chain and
15 quality control processes and usurped Cisco's right to control the quality of products bearing the
16 Cisco Marks being sold to the public. Because these materially-altered products did not undergo
17 Cisco's rigorous quality control, there can be no doubt that the products are materially different
18 from genuine products.

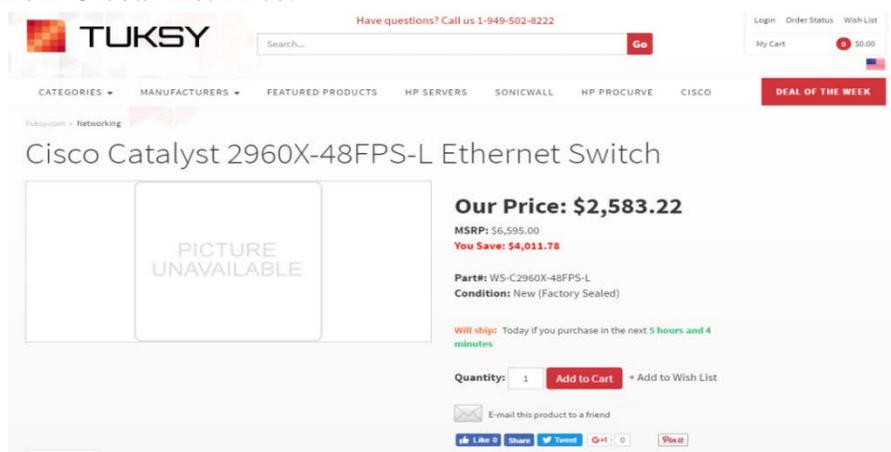
19 58. There are other material differences between Defendants' counterfeit 48 port Cisco
20 Catalyst 2960-X series switch and a genuine Cisco 24 port Catalyst 2960-X switch. For example,
21 the power supply specified by Cisco for a the 48 port switch is different from the power supply
22 specified for a 24 port switch. For the 48 port switch to use the power supply intended for a 24
23 port switch presents material safety and performance issues, as the wattage rating is different
24 (915W, 14.2A as compared to 525W, 7.1A). If Defendants' had disclosed this, the difference
25 between the use of a higher grade power supply and the lower grade power supply used by
26 Defendants, which presents significant safety and performance issues, would be highly relevant
27 and material to the consumer's purchasing decision.

28

b. Sale Of Materially-Altered Switches in January 2017

59. An investigator engaged by Cisco made purchases from Defendant BecTech on January 9, 2017 and January 11, 2017. The January 9 purchase was made from BecTech Global's store on Amazon.com, of a Cisco WS-C2960X-48FPS-L switch. The switch (serial number FOC2038Y32W) was sent by Defendant to Berkeley, California, within the Northern District of California.

60. The January 11 purchase was made from Tuksy's store on Amazon.com, for a WS-C2960X-48FPS-L switch. Tuksy advertised the switch as "New (Factory Sealed)," at a steep discount from Global List Price:



61. The switch related to the January 11 purchase (serial number FCW2048B7CM) was sold into and sent by the Arbitech Defendants to El Cerrito, California, within the Northern District of California.

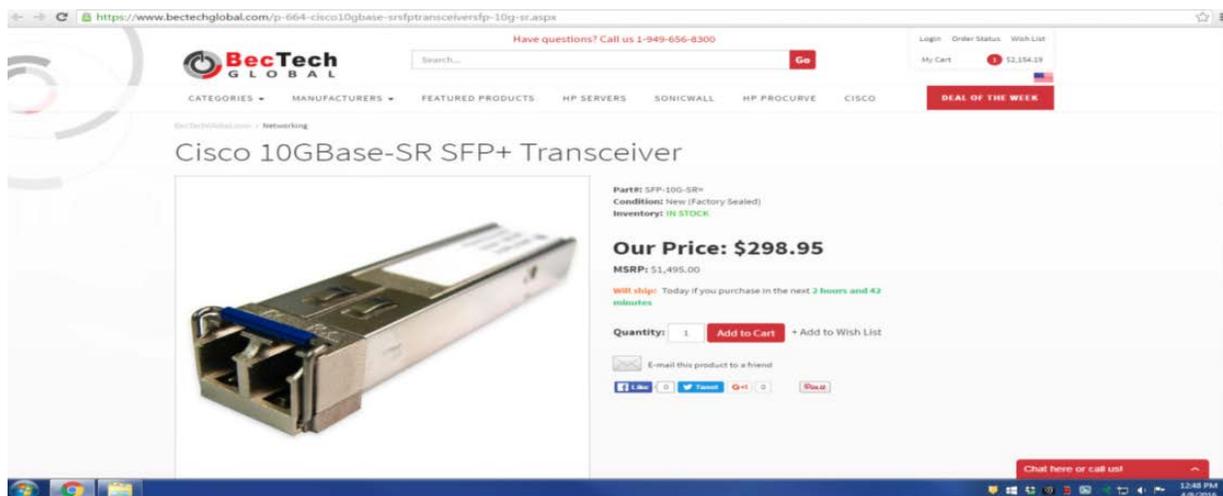
62. Cisco is informed and believes, and thereon alleges, that Arbitech is the actual entity that managed and fulfilled the sale of the switch, even though BecTech offered it for sale and made the actual sale, through its Tuksy storefront. In addition, an inspection of the switches and their packaging revealed that both had been materially altered, which among other things rendered false and misleading their description of the product as "New (Factory Sealed)." Genuine Cisco switches are placed in boxes after manufacture and sealed with tape that prominently bears the Cisco trademark. In addition, genuine Cisco switches include a high quality power cord that is specified by Cisco and has a plug that is compatible with electrical outlets in the country in which the switch is sold, and therefore is established to be safe and proper for use in

1 that country.

2 63. Among other things, the switches sold by Defendants were materially different
 3 from Cisco switches sold in the United States as each had a different power cord than the genuine
 4 one included by Cisco when it manufactured the product. Using non-standard power cords would
 5 be material to a customer's purchasing decision, if Defendants had disclosed this fact, since these
 6 swapped in power cords would not have been put through the same rigorous quality control testing
 7 as a genuine Cisco power cord and may affect the functioning of the product itself. Furthermore,
 8 in order to switch the power cords, the sealed boxes needed to be opened and then resealed, and
 9 therefore not "factory sealed" as represented by Defendants. The fact that the switch accessories,
 10 packaging/sealing tape had been altered and that the products were not "Factory sealed" as
 11 advertised would of course be highly relevant to a customer's purchasing decision, otherwise
 12 Defendants would have sold them as "open box" and disclosed that it came with a third party non-
 13 genuine power cord.

14 **c. Sale of Potentially Stolen Transceivers in April 2016**

15 64. When the investigator purchased a switch from BecTech Global's online internet
 16 store on or about April 8, 2016, he also purchased two SFP-10G-SR transceivers. The
 17 transceivers were represented by BecTech to be "New (Factory Sealed)" at a steep discount from
 18 Cisco's Global List Price:



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28 65. Cisco is informed and believes, and thereon alleges, that Arbitech is the actual

1 entity that managed and fulfilled the sale of these transceivers, even though BecTech offered it for
2 sale and made the actual sale, through its BecTech Global storefront. The transceivers (serial
3 numbers JUR190905JF and JUR19100Q8C) were sold into and sent by the Arbitech Defendants
4 to the investigator in Berkeley, CA, within the Northern District of California.

5 66. According to Cisco's records, transceivers with these serial numbers were delivered
6 to Cisco in San Jose, California, on or about April 2, 2015, for its internal use/demo evaluation
7 only. Cisco has no sales records for these transceivers. Thus, if the serial numbers are genuine,
8 these transceivers likely were obtained by theft from Cisco, and were not "new" when sold by
9 BecTech. If the serial numbers are fake, then these transceivers are counterfeit. On May 25,
10 2017, counsel for Cisco sent a letter to Defendant BecTech. Counsel informed Defendant that
11 there were no sales records for the two transceivers, suggesting that they might have been stolen.
12 On June 14, 2017, counsel for Defendant responded to the letter, but provided no information
13 about who sold the transceivers to Defendant.

14 **d. Sale of SMARTnet Contract in April 2016 that the Arbitech**
15 **Defendants Induced Cisco Authorized Reseller to Sell in Violation of**
16 **the Authorized Reseller's Contractual Obligations**

17 67. An investigator engaged by Cisco purchased from the Arbitech Defendants a
18 SMARTnet contract on or about April 11, 2016, for the counterfeit WS-C2960X-48FPS-L switch
19 that had been purchased on or about April 8, 2016. The Arbitech Defendants sold the SMARTnet
20 contract to the investigator, who was located in Berkeley, California, within the Northern District
21 of California. The SMARTnet contract was sold by a Cisco Authorized Reseller in Germany.
22 Cisco is informed and believes, and thereon alleges, that the Arbitech Defendants were in direct
23 contact with the Authorized Reseller in Germany, or purchased the SMARTnet contract through
24 an agent, with knowledge that the rogue Authorized Reseller was violating its contractual
25 obligations to Cisco by making the sale. The SMARTnet contract was not "off the shelf," but
26 rather was created for the end customer identified by the Arbitech Defendants. Based on these
27 circumstances, Cisco is therefore informed and believes, and thereon alleges, that the Arbitech
28 Defendants intentionally and actively induced the Authorized Reseller to breach its contract with
Cisco and that the Authorized Reseller would have performed its obligations to Cisco absent the

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1 Arbitech Defendants’ conduct. That Authorized Reseller was terminated as a Cisco Authorized
2 Reseller following this unlawful sale of a SMARTnet contract, because that contract was not sold
3 to an End Customer as is required by the ICPA.

4 68. Cisco SMARTnet contracts are intended only for Cisco products that have been
5 procured through the authorized distribution channel. If a customer desires a SMARTnet contract
6 that is not procured through the authorized distribution channel, that product must be inspected to
7 determine if it is genuine and not counterfeit, amongst other inspection points. This SMARTnet
8 contract sold by the Arbitech Defendants in April 2016 underscores the reason for this policy, as
9 the Cisco switch which Defendants placed under the comprehensive support contract was in fact
10 counterfeit. If this had been a sale to a customer instead of an investigator, Cisco would have been
11 exposed to the costs of supporting and potentially replacing the counterfeit product. Cisco was
12 further harmed and damaged by the induced breach of contract here because this unlawful conduct
13 undermines and corrodes Cisco’s partner network and the trust of other partners and end users in
14 the products and services provided by Cisco Authorized Resellers. Further, the involvement of the
15 Authorized Reseller further harms and damages Cisco because it implies Cisco authorization and
16 endorsement, which undermines and harms Cisco’s established reputation for high quality control
17 when, as in this case, the partner and the Arbitech Defendants conspired to, and did, put a
18 counterfeit switch under a SMARTnet contract.

19 **FIRST CLAIM FOR RELIEF**

20 **Federal Trademark Infringement**

21 **(15 U.S.C. § 1114)**

22 **Against All Defendants**

23 69. Cisco incorporates by reference each of the allegations in the preceding paragraphs
24 of this Complaint as though fully set forth here.

25 70. The Cisco Marks are valid, protectable trademarks that have been registered as
26 marks on the principal register in the United States Patent and Trademark Office. Cisco is the
27 owner and registrant of the Cisco Marks.

28 71. As described in more detail above, Defendants have used and counterfeited the

1 Cisco Marks in connection with the marketing, promotion, and sale of their goods and services
2 without Cisco's consent, in a manner that is likely to cause, and has actually caused, confusion
3 and/or mistake, or that has deceived members of the consuming public and/or the trade. Indeed,
4 Defendants counterfeiting and infringing activities are likely to cause and are actually causing
5 confusion, mistake, and deception among members of the trade and the general consuming public
6 as to the origin, sponsorship, and quality of Defendants' infringing products, counterfeit
7 packaging, inferior warranty, and other related commercial activities. As of the filing of this
8 Complaint, Defendants are continuing to infringe the Cisco Marks unabated as alleged further
9 above.

10 72. The Cisco Marks and the goodwill of the business associated with them are
11 tremendously valuable in the United States and worldwide because they are distinctive and
12 universally associated in the public perception with the highest quality network and
13 communications technology products and services.

14 73. Defendants have sold, offered to sell, distributed, and advertised—and continue to
15 sell, offer to sell, manufacture, distribute, and advertise—infringing networking hardware products
16 bearing Cisco Marks.

17 74. The differences between Defendants' unauthorized products and genuine Cisco
18 goods are material, as consumers would consider those differences, alleged further above, to be
19 material to their purchasing decisions.

20 75. Defendants' actions have caused, and are likely to continue to cause, confusion,
21 mistake, and deception as to the origin and quality of Defendants' unauthorized products because
22 they are intentionally calculated to mislead the general purchasing public into believing that
23 Defendants' unauthorized products originated from, are associated with, or are otherwise
24 authorized by Cisco.

25 76. Upon information and belief, Defendants' infringing actions were committed
26 fraudulently, willfully, and in bad faith, with knowledge of Cisco's exclusive rights to and
27 goodwill in the Cisco Marks, or with willful blindness to the same, and with the intent to cause
28 confusion, to cause mistake and/or to deceive. Accordingly, Defendants' actions constitute willful

1 trademark infringement and counterfeiting of the Cisco Marks in violation of 15 U.S.C. §§ 1114
2 and 1117.

3 77. Defendants' unauthorized use of the Cisco Marks constitutes trademark
4 infringement of the federally registered Cisco Marks and has caused substantial damage to Cisco
5 and to the reputation and goodwill symbolized by the Cisco Marks in violation of Section 32 of
6 the Lanham Act, 15 U.S.C. § 1114. Defendants' unauthorized use of the Cisco Marks was
7 conducted intentionally and with notice and full knowledge that the use was unauthorized by
8 Cisco.

9 78. Cisco has been, and continues to be, damaged by Defendants' infringement,
10 including by suffering irreparable harm through the diminution of trust and goodwill among Cisco
11 consumers and members of the general consuming public and the trade. Cisco is entitled to an
12 injunction against Defendants, and an order of destruction of all infringing products, as well as all
13 monetary relief and other remedies available under the Lanham Act, including but not limited to
14 trebled damages and/or actual profits, reasonable attorney's fees, costs and prejudgment interest,
15 and/or statutory damages.

16 **SECOND CLAIM FOR RELIEF**

17 **Federal Trademark Counterfeiting**

18 **(15 U.S.C. § 1114)**

19 **Against All Defendants**

20 79. Cisco incorporates by reference each of the allegations in the preceding paragraphs
21 of this Complaint as though fully set forth here.

22 80. The Cisco Marks are valid, protectable trademarks that have been registered as
23 marks on the principal register in the United States Patent and Trademark Office. Cisco is the
24 owner and registrant of the Cisco Marks.

25 81. As described in more detail above, Defendants have used and counterfeited the
26 Cisco Marks in connection with the marketing, promotion, and sale of their goods and services
27 without Cisco's consent, in a manner that is likely to cause, and has actually caused, confusion
28 and/or mistake, or that has deceived members of the consuming public and/or the trade. Indeed,

1 Defendants' counterfeiting and infringing activities are likely to cause and are actually causing
2 confusion, mistake, and deception among members of the trade and the general consuming public
3 as to the origin, sponsorship, and quality of Defendants' infringing products, counterfeit
4 packaging, inferior warranty, and other related commercial activities. As of the filing of this
5 Complaint, Defendants are continuing to infringe the Cisco Marks unabated as alleged further
6 above.

7 82. Defendants have publicly advertised, sold, offered to sell, and distributed
8 counterfeit Cisco products in interstate commerce in direct competition with Cisco and without
9 authorization or consent to use the Cisco Marks but with full knowledge of Cisco's notorious prior
10 rights in those marks.

11 83. Defendants' counterfeit Cisco products reproduce, counterfeit, copy, and colorably
12 imitate the Cisco Marks or display a spurious designation that is identical with, or substantially
13 indistinguishable from, the Cisco Marks. Defendants have applied their reproductions,
14 counterfeits, copies, and colorable imitations of the Cisco Marks to labels, prints, and packages
15 intended to be used in commerce upon or in connection with the sale, offering for sale,
16 distribution, or advertising of Defendants' counterfeit products, which is likely to cause confusion,
17 to cause mistake, or to deceive.

18 84. Defendants' unauthorized use of the Cisco Marks on or in connection with
19 Defendants' counterfeit products was conducted intentionally and with notice and full knowledge
20 that the use was unauthorized by Cisco. Accordingly, Defendants' actions constitute willful
21 trademark infringement and counterfeiting of the Cisco Marks in violation of 15 U.S.C. §§ 1114
22 and 1117.

23 85. Cisco has been, and continues to be, damaged by Defendants' infringement,
24 including by suffering irreparable harm through the diminution of trust and goodwill among Cisco
25 consumers and members of the general consuming public and the trade. Cisco is entitled to an
26 injunction against Defendants, and an order of destruction of all infringing products, as well as all
27 monetary relief and other remedies available under the Lanham Act, including but not limited to
28 trebled damages and/or actual profits, reasonable attorney's fees, costs and prejudgment interest,

1 and/or statutory damages.

2 **THIRD CLAIM FOR RELIEF**

3 **Federal Unfair Competition**

4 **(15 U.S.C. § 1125)**

5 **Against All Defendants**

6 86. Cisco incorporates by reference each of the allegations in the preceding paragraphs
7 of this Complaint as though fully set forth here.

8 87. Defendants’ resale of infringing products that are designed to appear identical to
9 genuine Cisco products and thereby employ the same nature, style, look, and color as genuine
10 Cisco products. Moreover, as alleged above, Defendants sell products that have affixed
11 counterfeit or infringing versions or reproductions of the Cisco Marks to unauthorized products
12 and/or to the packaging, wrapping, etc., in which the infringing products are packaged. This
13 unauthorized use of the Cisco Marks is likely to cause confusion, to deceive, and to mislead the
14 consuming public into believing that there is some affiliation, connection, or association between
15 Defendants and Cisco and is likely to cause confusion, mistake, or deception as to the origin,
16 source, sponsorship, authorization, approval, or affiliation of Defendants’ unauthorized products.

17 88. Further, Defendants represent that their products are “new” and “factory sealed.”
18 This is false, as reflected in the purchases of switches in January 2017, which had been opened
19 and repackaged—thus, no longer “new” or “factory sealed”—and which had additional material
20 differences, including but not limited to having non-standard power cords of unknown origin
21 swapped in for the original power cords, an inappropriate power supply for the product, non-
22 genuine and untested components, components primarily designed or produced for the purpose of
23 circumventing Cisco’s technological protection measures that effectively control access to its
24 copyrighted software and to thereby allow third parties to access Cisco’s Copyrighted Works
25 without authorization.

26 89. Defendants’ actions, including the unauthorized use of the Cisco Marks in
27 commerce, constitute false designation of origin, false or misleading descriptions of fact, and false
28 or misleading representations of fact, which have caused, and are likely to continue to cause,

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1 confusion, mistake, and deception, as to Defendants’ association or affiliation with Cisco, or lack
2 thereof, as well as to the origin, source, and sponsorship of Defendants’ unauthorized products, in
3 violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

4 90. Defendants, in commercial advertising and promotion, misrepresent the nature,
5 characteristics, qualities, or geographic origin of the Cisco products they sold, by falsely
6 advertising that the infringing goods were genuine Cisco products and that the products were new,
7 “factory sealed,” and not disclosing that they are not covered by the manufacturer’s warranty. The
8 false advertising concerned material information that was likely to influence a consumer’s
9 purchasing decision.

10 91. Defendants’ unauthorized and misleading use of the Cisco Marks constitute willful
11 infringement of the Cisco Marks in violation of 15 U.S.C. § 1114(1)(b) and entitling Cisco to
12 treble damages and/or enhanced statutory damages under 15 U.S.C. §§ 1117(b) and (c).

13 92. Defendants’ actions described above, including its unauthorized and misleading use
14 of the Cisco Marks in commerce have caused, and unless enjoined, will continue to cause,
15 substantial and irreparable injury to Cisco and to the business and goodwill represented by the
16 Cisco Marks, thereby leaving Cisco without an adequate remedy at law.

17 **FOURTH CAUSE OF ACTION**

18 **Violations of the Digital Millennium Copyright Act**

19 **(17 U.S.C. § 1201, et seq.)**

20 **Against All Defendants**

21 93. Cisco incorporates by reference each of the allegations in the preceding paragraphs
22 of this Complaint as though fully set forth here.

23 94. As set forth in more detail above, Cisco employs technological protection measures
24 that effectively control access to Cisco’s Copyrighted Works.

25 95. As set forth in more detail above, Defendants’ added components and related
26 software is used to circumvent a technological protection measure put in place by Cisco, because it
27 avoids, bypasses, removes, descrambles, decrypts, deactivates, and/or impairs a technological
28 protection measure without Cisco’s authority for the purpose of gaining unauthorized access to

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1 Cisco’s copyrighted software.

2 96. As set forth in more detail above, Defendants have manufactured, imported, offered
3 to the public, provided, or otherwise trafficked in a technology, product, service, device,
4 component, or part thereof, that is primarily designed or produced for the purpose of
5 circumventing Cisco’s technological protection measures that effectively control access to its
6 copyrighted software and to thereby allow third parties to access Cisco’s Copyrighted Works
7 without authorization.

8 97. Defendants’ circumvention devices have only limited commercially significant
9 purpose or use other than to circumvent a technological protection measure that effectively
10 controls access to copyrighted works, or are marketed by Defendants for use in circumventing a
11 technological protection measure that effectively controls access to copyrighted works.

12 98. Cisco is informed and believes, and thereon alleges, that Defendants have realized
13 significant profit, and that Cisco has sustained significant damages, as a result of the above
14 violations of the DMCA.

15 99. Cisco is entitled to recover actual damages it has suffered and/or any profits gained
16 by Defendants as a result of their violations of the DMCA Cisco is also entitled to recover full
17 statutory damages, enhanced damages, fees, costs, injunctive relief, and any other and further
18 damages or relief to the fullest extent provided under the law.

19 **FIFTH CAUSE OF ACTION**

20 **California Statutory Misleading and Deceptive Advertising,**

21 **(Cal. Bus. & Prof. Code § 17500, et seq.)**

22 **Against the Arbitech Defendants**

23 100. Cisco incorporates by reference each of the allegations in the preceding paragraphs
24 of this Complaint as though fully set forth here.

25 101. Defendants BecTech and Arbitech have made false and misleading statements
26 about their relationship and/or association with Cisco.

27 102. Defendants also misleadingly advertised its Cisco products as new, and “factory
28 sealed” when in actuality the products were counterfeit, as confirmed by Cisco brand protection

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1 engineers, or pre-owned.

2 103. Defendants knew that these statements were false or misleading, or with reasonable
3 care, should have known them to be false or misleading.

4 104. Defendants’ statements have misled, or are likely to mislead, a reasonable
5 consumer into believing that Defendants were selling products as an authorized Cisco reseller, and
6 that the “Cisco” products sold by Defendants are new, original, and eligible for Cisco warranty.

7 105. The conduct alleged above constitutes false and misleading advertising, in violation
8 of Section 17500, et seq. of California's Business and Professions Code.

9 106. Plaintiffs have suffered loss of money as a result of Defendants’ misleading and
10 false advertising. Defendant has, and will continue to cause, irreparable injury to Plaintiffs,
11 including injury to Plaintiffs’ reputation and goodwill. Defendants’ activities, unless restrained,
12 will continue to cause further irreparable injury to Plaintiffs for which Plaintiffs have no adequate
13 remedy at law.

14 **SIXTH CLAIM FOR RELIEF**

15 **Inducing Breach And Interfering With Contract**

16 **(Common Law)**

17 **Against the Arbitech Defendants**

18 107. Cisco incorporates by reference each of the allegations in the preceding paragraphs
19 of this Complaint as though fully set forth here.

20 108. Under the terms of Cisco’s ICPA, Cisco’s Authorized Resellers are contractually
21 required to sell Cisco products and service contracts only to End Users, and to purchase Cisco
22 products and service contracts only from Cisco or an authorized source (identified in the contract
23 as applicable in the United States as a Cisco authorized distributor). On information and belief,
24 Defendants BecTech and Arbitech are aware of these contractual obligations.

25 109. Cisco is informed and believes, and on that basis alleges, that the Arbitech
26 Defendants have intentionally caused Cisco’s Authorized Resellers to breach their contracts with
27 Cisco, or otherwise disrupted performance of those contracts, including the ICPA, and/or that they
28 knew that prevention or disruption of the performance of the contracts was certain or substantially

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1 certain to occur, by causing Cisco’s Authorized Resellers to purchase Cisco products and service
2 contracts from them, rather than from Cisco or authorized Cisco distribution as is required by the
3 contractual relationship. Cisco is further informed and believes, and on that basis alleges, that the
4 Arbitech Defendants directly induced Cisco’s Authorized Resellers to breach their agreements
5 with Cisco, or otherwise prevented or disrupted performance of the agreements with Cisco, by
6 selling Cisco service contracts to them.

7 110. As a direct and proximate result of the Arbitech Defendants’ intentional
8 inducements of breaches and/or disruptions in performance of the ICPA identified herein, of
9 which the Arbitech Defendants’ conduct was a substantial factor in causing, Cisco has suffered
10 and will continue to suffer direct, consequential, and other damages, including but not limited to,
11 out-of-pocket expenses related to services provided on unauthorized Cisco products, in an amount
12 to be determined at trial in excess of \$75,000.

13 **SEVENTH CLAIM FOR RELIEF**

14 **Conversion**

15 **(Common Law)**

16 **Against the Arbitech Defendants**

17 111. Cisco incorporates by reference each of the allegations in the preceding paragraphs
18 of this Complaint as though fully set forth here.

19 112. On information and belief, the Arbitech Defendants intentionally took possession
20 of Cisco products which had been provided to Cisco for its own internal use and were not for sale,
21 and sold them. Cisco owned and had a continued right to possess these converted products.

22 113. As a proximate result of the Arbitech Defendants’ acts of conversion, Cisco has
23 lost valuable product.

24 114. But for the Arbitech Defendants’ acts of conversion, Cisco would have maintained
25 control of their products and would have fully profited from the sale of them, if it decided to sell
26 them, or would have enjoyed the benefits of their continued use.

27 115. The Arbitech Defendants intentionally and substantially interfered with Cisco’s
28 property by taking possession of the products that were converted from Cisco and then selling

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1 them.

2 116. Cisco did not consent to the conversion.

3 117. The Arbitech Defendants’ actions have caused and, unless restrained by this Court,
4 will continue to cause irreparable injury to Cisco.

5 118. The Arbitech Defendants’ conduct was a substantial factor in causing Cisco
6 damages and harm resulting from the above alleged conversion.

7 **EIGHTH CLAIM FOR RELIEF**

8 **Unjust Enrichment**

9 **(Common Law)**

10 **Against All Defendants**

11 119. Cisco incorporates by reference each of the allegations in the preceding paragraphs
12 of this Complaint as though fully set forth here.

13 120. Defendants unjustly received benefits at the expense of Cisco through their
14 wrongful conduct, as alleged further above. Defendants continue to unjustly retain these benefits
15 at the expense of Cisco. The unjust receipt of the benefits obtained by Defendants lacks any adequate
16 legal basis and thus cannot conscientiously be retained by Defendants. Therefore, the circumstances of the
17 receipt and retention of such benefits are such that, as between Cisco and Defendants, it is unjust for
18 Defendants to retain any such benefits.

19 121. Cisco is therefore entitled to full restitution of all amounts and/or other benefits in
20 which Defendants have been unjustly enriched at Cisco’s expense, in an amount to be proven at
21 trial.

22 **NINTH CLAIM FOR RELIEF**

23 **California Unfair Competition**

24 **(Cal. Bus. & Prof. Code §§ 17200 et seq.)**

25 **Against All Defendants**

26 122. Cisco incorporates by reference each of the allegations in the preceding paragraphs
27 of this Complaint as though fully set forth here.

28 123. California Business and Professions Code §§ 17200 et seq. prohibits acts of unfair

1 competition, which includes any unlawful business act or practice.

2 124. Defendants have knowingly, willfully, and unlawfully infringed the Cisco Marks,
3 including through the sale of infringing Cisco networking hardware products in violation of the
4 Lanham Act, 15 U.S.C. § 1114.

5 125. As a direct, proximate, and foreseeable result of Defendants' sale of infringing
6 Cisco networking hardware parts, Cisco has further been deprived of lost revenue and payments,
7 and has therefore sustained injury in fact.

8 126. Upon information and belief, due to Defendants' unlawful conduct, Defendants
9 have caused and induced its customers to make invalid warranty claims to Cisco, thereby causing
10 Cisco to send those customers replacement parts to which they were not entitled.

11 127. Upon information and belief, as a direct, proximate, and foreseeable result of
12 Defendants' conduct, as alleged above, Cisco has lost valuable product that was shipped to
13 Defendants' customers pursuant to warranty claims, but to which Defendants' customers were not
14 rightfully entitled, and incurred costs associated with processing the service requests and returns.

15 128. Upon information and belief, and as alleged further above, Defendants' conduct
16 induced authorized resellers to breach their contracts with Cisco, thereby harming fair
17 competition.

18 129. Defendants' practices were unlawful, and constitute unfair competition as defined
19 by Cal. Bus. & Prof. C. §§ 17200 *et seq.* Defendants' misconduct was unlawful because, as
20 described herein, their misconduct constitutes violations of numerous state and federal statutes,
21 including but not limited to Cal. Civ. Code § 1797.81, conversion, state false advertising laws
22 such as Cal. Bus. Prof. Code § 17500, as well as the Lanham Act, 15 U.S.C. §§ 1114 and 1125,
23 and the Federal Trade Commission Act, 15 U.S.C. § 45. Further, their alleged conduct was unfair
24 in that Defendants' actions, as described herein, significantly threatened and/or harmed
25 competition through infringement, counterfeiting, false advertising, conversion, and
26 circumvention, as well as by inducing authorized resellers to breach their contracts with Cisco,
27 which not only disrupts Cisco's pro-competitive distribution network but also undermines Cisco's
28 ability to fairly compete in the marketplace.

