

1 GIDON M. CAINE (Cal. State Bar No. 188110)
 2 ALSTON & BIRD LLP
 275 Middlefield Road
 Suite 150
 3 Menlo Park, California 94025-4008
 Telephone: (650) 838-2000
 4 Facsimile: (650) 838-2001
 gidon.caine@alston.com

5
 6 Jessica P. Corley (*pro hac vice*)
 Elizabeth P. Skola (*pro hac vice*)
 ALSTON & BIRD LLP
 7 One Atlantic Center
 1201 West Peachtree Street
 8 Atlanta, Georgia 30309-3424
 Telephone: (404) 881-7000
 9 Facsimile: (404) 881-7777
 jessica.corley@alston.com
 10 elizabeth.skola@alston.com

11 Attorneys for Nominal Defendant
 12 OCLARO, INC.

13 **UNITED STATES DISTRICT COURT**
 14 **NORTHERN DISTRICT OF CALIFORNIA**

15 IN RE OCLARO, INC. DERIVATIVE
 16 LITIGATION

Lead Case No. 11-cv-03176-EMC
 (Derivative Action)

17 This Document Relates to:
 18 ALL ACTIONS

**STIPULATION AND [PROPOSED]
 ORDER STAYING PROCEEDINGS**

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1 WHEREAS, between June 27, 2011 and July 7, 2011, three related shareholder derivative
2 actions, *Guindani v. Couder*, No. 3:11-cv-03176-PSG (N.D. Cal. filed June 27, 2011), *Coney v.*
3 *Couder*, No. 3:11-cv-03214-HRL (N.D. Cal. filed June 28, 2011), and *Braman v. Couillaud*, No.
4 3:11-cv-03322-RS (N.D. Cal. filed July 7, 2011) (collectively, the “Oclaro Derivative Litigation”),
5 were filed in this Court against nominal defendants Oclaro, Inc. (“Oclaro”) and certain of its officers
6 and directors (collectively, “defendants”);

7 WHEREAS, on July 20, 2011, the Court issued a separate order consolidating the Oclaro
8 Derivative Litigation under the caption *In re Oclaro, Inc. Derivative Litigation*, No. 11-cv-03176-
9 EMC;

10 WHEREAS, the Oclaro Derivative Litigation involved many of the same parties and events
11 as a putative class action that was filed in this Court on May 19, 2011, *Westley v. Oclaro, Inc.*, No.
12 3:11-cv-02448-EMC (N.D. Cal.) (“Oclaro Securities Class Action”);

13 WHEREAS, lead plaintiff in the Oclaro Derivative Action intends to file a consolidated or
14 amended complaint in that action;

15 WHEREAS, the defendants intend to file a motion to dismiss the consolidated or amended
16 complaint in the Oclaro Derivative Action;

17 WHEREAS, there is an overlap in subject matter between the Oclaro Derivative Litigation
18 and the Oclaro Securities Class Action such that the resolution of the defendants’ motion to dismiss
19 in the Oclaro Securities Class Action may impact the Oclaro Derivative Litigation;

20 WHEREAS, based upon the circumstances unique to this action and in order to avoid the
21 unnecessary expenditure of judicial resources or effort by the parties in this action and the Court
22 prior to the resolution of the motion to dismiss in the Oclaro Securities Class Action, the parties to
23 the Oclaro Derivative Action have agreed, subject to this Court’s approval, to a stay of all
24 proceedings, including motions practice and discovery, in this action until such time as the Court has
25 issued an order ruling on the defendants’ motion to dismiss in the Oclaro Securities Class Action;

26 WHEREAS, a related shareholder derivative action styled, *Moskal v. Couder, et al.*, No. 1-
27 11-cv-202880 (State Court Derivative Action) is pending in Santa Clara Superior Court and the

1 plaintiff in that case has similarly agreed to a stay of the proceedings pending the outcome of
2 defendants' motion to dismiss in the Oclaro Securities Class Action;

3 WHEREAS, the parties agree that, at any time during which this case is stayed pursuant to
4 this Order, any party may file a motion with the Court seeking to lift the stay, which may be opposed
5 by any other party; and

6 WHEREAS, this Stipulation and Order is without prejudice to, or waiver of any rights,
7 arguments, or defenses otherwise available to the parties in this action, including, but not limited to,
8 the right to revisit the timing of the below-referenced pleadings and motions once the Court has
9 issued an order ruling on the defendants' motion to dismiss in the Oclaro Securities Class Action.

10 NOW THEREFORE, the undersigned parties, by and through their counsel of record, hereby
11 stipulate as follows:

12 1. All proceedings, including motions practice and discovery, in *In re Oclaro, Inc.*
13 *Derivative Litigation*, No. 03-cv-03176-EMC (N.D. Cal.) are hereby stayed until such time as (a) the
14 defendants file an answer to any complaint in the Oclaro Securities Class Action; or (b) the Oclaro
15 Securities Class Action is dismissed in its entirety with prejudice.

16 2. The Case Management Conference in the Oclaro Derivative Litigation, currently
17 scheduled for December 2, 2011, is hereby adjourned until such time as (a) thirty (30) days after the
18 Court issues an order denying in any part defendants' motion to dismiss the Oclaro Securities Class
19 Action; (b) thirty (30) days after the Oclaro Securities Class Action is dismissed in its entirety with
20 prejudice; or (c) to such other date and time as the Court shall order.

21 3. The deadline for the Joint Case Management Conference Statement, currently set for
22 November 23, 2011, is hereby adjourned. The Joint Case Management Conference Statement shall
23 be due one week prior to the rescheduled Case Management Conference.

24 4. To facilitate coordination and to avoid duplicative discovery, subject to entry of an
25 appropriate protective order in the Oclaro Securities Class Action and plaintiff's agreement to be
26 bound by the terms of such protective order, defendants will provide plaintiffs in the Oclaro
27 Derivative Action, concurrently with any production (formal or informal) in the Oclaro Securities

1 Class Action or State Court Derivative Action: (i) copies of all documents and written responses to
2 discovery requests produced to the Oclaro Securities Class Action plaintiffs or State Court
3 Derivative Action plaintiff in the form and manner in which such documents are produced to
4 plaintiffs in the Oclaro Securities Class Action or plaintiff in the State Court Derivative Action; (ii)
5 any written agreements regarding the scope of discovery in the Oclaro Securities Class Action or the
6 State Court Derivative Action; (iii) all deposition transcripts; and (iv) their consent to the plaintiffs
7 in the Oclaro Derivative Action attending any depositions conducted in the Oclaro Securities Class
8 Action or the State Court Derivative Action. The parties shall meet and confer in good faith
9 regarding any additional discovery they may wish to conduct in the Oclaro Derivative Action.

10 5. No information obtained exclusively by operation of this stipulation shall be included
11 by the plaintiffs in the Oclaro Derivative Action in any complaint or pleading, unless and until the
12 Court has ruled that they have adequately pled demand futility or entered an order permitting the use
13 of such information in the pleadings or permitting discovery to proceed prior to a finding of demand
14 futility. Plaintiffs expressly reserve their right to move for such an order and the defendants reserve
15 the right to oppose such motion.

16 6. At any time during which this case is stayed pursuant to Order, a party may file a
17 motion with the Court seeking to lift the stay, which may be opposed by any other party.

18 IT IS SO STIPULATED.

19 **ALSTON & BIRD LLP**

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21 DATED: Menlo Park, California
22 November 23, 2011

21 By: s/ Gidon M. Caine
22 GIDON M. CAINE (Cal. State Bar No. 188110)
23 275 Middlefield Road
24 Suite 150
25 Menlo Park, California 94025-4008
26 Telephone: (650) 838-2000
27 Facsimile: (650) 838-2001
28 gidon.caine@alston.com

and

JESSICA P. CORLEY (*pro hac vice*)
ELIZABETH P. SKOLA (*pro hac vice*)
One Atlantic Center

1201 West Peachtree Street
Atlanta, Georgia 30309-3424
Telephone: (404) 881-7000
Facsimile: (404) 881-7777
jessica.corley@alston.com
elizabeth.skola@alston.com

Counsel for Nominal Defendant Oclaro, Inc.

JOHNSON & WEAVER, LLP

DATED: San Diego, California
November 23, 2011

By: s/ Frank J. Johnson
FRANK J. JOHNSON (Cal. State Bar No.
174882)
KEITH M. COCHRAN (Cal. State Bar No.
254346)
110 West A Street
Suite 750
San Diego, California 92101
Telephone: (619) 230-0063
Facsimile: (619) 255-1856
frankj@johnsonandweaver.com

Counsel for Lead Plaintiff

SIGNATURE ATTESTATION

I, Gidon M. Caine, am the ECF User whose ID and password are being used to file this Stipulation and Proposed Order Staying Proceedings. In compliance with General Order No. 45, X(B) regarding signatures, I hereby attest that Frank J. Johnson has concurred in this filing.

s/ Gidon M. Caine
GIDON M. CAINE

PURSUANT TO STIPULATION, IT IS SO ORDERED.

The 12/2/11 CMC is reset to 3/23/12 at 9:00 a.m. A joint CMC Statement shall be filed by 3/16/12.

DATED: San Francisco, California

The Hon. Edward M. Chen
United States District Judge

