

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 (admitted *pro hac vice*)
 ALSTON & BIRD LLP
 One Atlantic Center
 7 1201 West Peachtree Street
 Atlanta, Georgia 30309-3424
 8 Telephone: (404) 881-7000
 Facsimile: (404) 881-7777
 9 jessica.corley@alston.com

10 Attorneys for Nominal Defendant
 OCLARO, INC.

11
 12 **UNITED STATES DISTRICT COURT**
 13 **NORTHERN DISTRICT OF CALIFORNIA**

14 IN RE OCLARO, INC. DERIVATIVE
 15 LITIGATION

Lead Case No. 11-cv-03176-EMC

(Derivative Action)

16 This Document Relates to:

17 ALL ACTIONS

**STIPULATION AND [PROPOSED]
 ORDER SCHEDULING FILING OF
 AMENDED COMPLAINT AND
 DEFENDANTS' RESPONSE TO
 AMENDED COMPLAINT,
 RESCHEDULING CASE
 MANAGEMENT CONFERENCE, AND
 PROVIDING FOR THE SHARING OF
 CERTAIN DISCOVERY**

1 WHEREAS, between June 27, 2011 and July 7, 2011, three related shareholder derivative
2 actions (collectively, the “Oclaro Derivative Litigation”) were filed in this Court by Plaintiffs against
3 nominal defendants Oclaro, Inc. (“Oclaro”) and certain of its officers and directors (collectively,
4 “Defendants”);

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

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

11 WHEREAS, on November 29, 2011, the Court entered an order staying all proceedings in
12 the Oclaro Derivative Litigation until such time as (a) the defendants file an answer to any complaint
13 in the Oclaro Securities Class Action; or (b) the Oclaro Securities Class Action is dismissed in its
14 entirety with prejudice;

15 WHEREAS, on March 27, 2012, the Court entered an order in the Oclaro Securities Class
16 Action granting the defendants’ motion to dismiss the plaintiffs’ amended complaint without
17 prejudice and allowing the plaintiffs thirty (30) days to file a second amended complaint in that
18 action;

19 WHEREAS, on April 26, 2012, the plaintiffs in the Oclaro Securities Class Action filed a
20 second amended complaint;

21 WHEREAS, on September 21, 2012, the Court entered an order in the Oclaro Securities
22 Class Action granting the defendants’ motion to dismiss the plaintiffs’ second amended complaint
23 without prejudice (the “September 21 Order”);

24 WHEREAS, on October 4, 2012, the plaintiffs in the Oclaro Securities Class Action filed a
25 motion for leave to seek reconsideration of the September 21 Order (“Motion for Leave”);

26 WHEREAS, on January 9, 2013, the Court issued notice in the Oclaro Derivative Litigation
27 rescheduling the Case Management Conference to March 21, 2013 and providing that a Case
28

1 Management Statement be filed by March 14, 2013;

2 WHEREAS, on January 10, 2013, the Court entered an order in the Oclaro Securities Class
3 Action granting in part and denying in part the plaintiffs' Motion for Leave, holding that the
4 plaintiffs had adequately plead scienter as to statements made in May and June 2010, but not as to
5 statements made in July and August 2010;

6 WHEREAS, on January 30, 2013, after conducting a case management conference, the Court
7 ordered that: (i) the parties in the Oclaro Securities Class Action may proceed with focused
8 discovery relating to scienter as to the May and June 2010 statements, to be completed within four
9 months of the order; (ii) early motions for summary judgment shall be filed by June 13, 2013, and
10 are noticed for hearing on July 18, 2013; and (iii) the plaintiffs' third amended complaint shall be
11 filed no later than March 1, 2013;

12 WHEREAS, the defendants in the Oclaro Securities Class Action intend to move to dismiss
13 the plaintiffs' third amended complaint;

14 WHEREAS, the defendants in the Oclaro Securities Class Action have yet to file an answer
15 to any complaint;

16 WHEREAS, in an effort to preserve the Court's and the parties' resources, the parties to this
17 action have agreed that (i) all proceedings in this action shall remain stayed until such time as (a) the
18 defendants file an answer to any complaint in the Oclaro Securities Class Action or (b) the Oclaro
19 Securities Class Action is dismissed in its entirety with prejudice; except that, subject to entry of an
20 appropriate protective order in the Oclaro Securities Class Action and Plaintiffs' agreement to be
21 bound by the terms of such protective order, Defendants shall produce to Plaintiffs in this action
22 certain documents produced to the plaintiffs in the Oclaro Securities Class Action and allow
23 Plaintiffs to attend any deposition taken in the Oclaro Securities Class Action; (ii) Plaintiffs shall
24 have thirty (30) days from the date the stay of proceedings in this action is lifted to file an amended
25 complaint (the "Amended Complaint"); (iii) Defendants shall have thirty (30) days from the date that
26 Plaintiffs file the Amended Complaint to file an answer or otherwise respond; and (iv) the case
27 management conference in this action shall be continued until such time as (a) thirty (30) days after
28

1 Defendants file an answer to the Amended Complaint; (b) thirty (30) days after this Court issues an
2 order denying in any part Defendants' motion to dismiss the Amended Complaint; or (c) such other
3 time as the Court shall order.

4 WHEREAS, this Stipulation and Order is without prejudice to, or waiver of any rights,
5 arguments, or defenses otherwise available to the parties in this action.

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

8 1. All proceedings in this action shall remain stayed until such time as (a) the defendants
9 file an answer to any complaint in the Oclaro Securities Class Action or (b) the Oclaro Securities
10 Class Action is dismissed in its entirety with prejudice; except that, subject to entry of an appropriate
11 protective order in the Oclaro Securities Class Action and Plaintiffs' agreement to be bound by the
12 terms of such protective order, Defendants shall produce to Plaintiffs in this action certain
13 documents produced to the plaintiffs in the Oclaro Securities Class Action and allow Plaintiffs to
14 attend any deposition taken in the Oclaro Securities Class Action.

15 2. Plaintiffs shall have thirty (30) days from the date the stay of proceedings in this
16 action is lifted to file the Amended Complaint.

17 3. Defendants shall have thirty (30) days from the date Plaintiffs file the Amended
18 Complaint to file an answer or otherwise respond.

19 4. The case management conference in this action is hereby continued until such time as
20 (a) thirty (30) days after Defendants file an Answer to the Amended Complaint; (b) thirty (30) days
21 after this Court issues an order denying in any part Defendants' motion to dismiss the Amended
22 Complaint; or (c) such other time as the Court shall order. A Case Management Statement shall be
23 submitted seven (7) days prior to the scheduled Case Management Conference.

1 **IT IS SO STIPULATED**

2 **ALSTON & BIRD LLP**

3
4 DATED: Menlo Park, California
March [___], 2013

5 By: /s/ Gidon M. Caine
6 GIDON M. CAINE (Cal. State Bar No. 188110)
7 275 Middlefield Road
Suite 150
Menlo Park, California 94025-4008
Telephone: (650) 838-2000
Facsimile: (650) 838-2001
gidon.caine@alston.com

8 and

9 JESSICA P. CORLEY (*pro hac vice*)
10 One Atlantic Center
11 1201 West Peachtree Street
Atlanta, Georgia 30309-3424
Telephone: (404) 881-7000
12 Facsimile: (404) 881-7777
jessica.corley@alston.com

13 Counsel for Nominal Defendant Oclaro, Inc.

14 **JOHNSON & WEAVER, LLP**

15
16 DATED: San Diego, California
17 March [___], 2013

18 By: s/ Frank J. Johnson
FRANK J. JOHNSON (Cal. State Bar No.
174882)
19 SHAWN E. FIELDS (Cal. State Bar No. 255267)
110 West A Street
Suite 750
San Diego, California 92101
Telephone: (619) 230-0063
20 Facsimile: (619) 255-1856
frankj@johnsonandweaver.com

21 Counsel for Lead Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SIGNATURE ATTESTATION

I, Gidon M. Caine, am the ECF User whose ID and password are being used to file this STIPULATION AND [PROPOSED] ORDER SCHEDULING FILING OF AMENDED COMPLAINT AND DEFENDANTS' RESPONSE TO AMENDED COMPLAINT, RESCHEDULING CASE MANAGEMENT CONFERENCE, AND PROVIDING FOR THE SHARING OF CERTAIN DISCOVERY. In compliance with General Order No. 45, X(B) regarding signatures, I hereby attest that Frank J. Johnson has concurred in this filing.

DATED: MARCH [__], 2013

/S/ GIDON M. CAINE
GIDON M. CAINE (CAL. STATE BAR NO. 188110)

PURSUANT TO STIPULATION, IT IS SO ORDERED. A Further CMC is set for 8/8/13 at 10:30 a.m. An updated joint CMC statement shall be filed by 8/1/13.

March 12, 2013

DATED: _____

THE HON. EDWARD M. CHEN
United States District Court Judge

