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7 [Additional Counsel Listed on Signature Page]

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 RALPH SARACENI, derivatively on
11 behalf of POLYCOM, INC.,

12 Plaintiff,

13 v.

14 ANDREW M. MILLER, BETSY S.
15 ATKINS, JOHN A. KELLEY, D. SCOTT
MERCER, WILLIAM A. OWENS, and
16 KEVIN T. PARKER,

17 Defendants,

18 and

19 POLYCOM, INC.,

20 Nominal Defendant.

Case No.: 3:13-cv-03880-SC

**STIPULATION AND ~~PROPOSED~~
ORDER CONSOLIDATING ACTIONS
AND APPOINTING LEAD COUNSEL**

Case Filed: August 21, 2013

1 JAMES DONNELLY, derivatively on
behalf of POLYCOM, INC.,

2 Plaintiff,

3 v.

4 ANDREW M. MILLER, BETSY S.
5 ATKINS, JOHN A. KELLEY, D. SCOTT
6 MERCER, WILLIAM A. OWENS, and
KEVIN T. PARKER,

7 Defendants,

8 and

9 POLYCOM, INC.,

10 Nominal Defendant.

Case No.: 5:13-cv-04810-PSG

Case Filed: October 16, 2013

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1 **WHEREAS**, there are presently two shareholder derivative actions against certain
2 current and former directors and officers of Polycom, Inc. (“Polycom”): *Saraceni v. Miller et*
3 *al.*, Case No. 3:13-cv-03880-SC, currently pending before this Court (the “*Saraceni Derivative*
4 *Action*”); and *Donnelly v. Miller et al.*, Case No. 5:13-cv-04810-PSG, currently pending in the
5 United States District Court for the Northern District of California, and initially/currently
6 assigned to Magistrate Judge Paul Singh Grewal (the “*Donnelly Derivative Action*”)
7 (collectively, “the Polycom Derivative Actions”);

8 **WHEREAS**, pursuant to the Court’s September 13, 2013 Order (Document No. 18),
9 the *Saraceni Derivative Action* has been related to a class action filed under the federal
10 securities laws currently pending before this Court: *Neal v. Polycom, Inc. et al.*, Case No.
11 3:13-cv-03476-SC (the “*Neal Class Action*”);

12 **WHEREAS**, Polycom, Eric Brown, and Sayed Darwish have filed an Administrative
13 Motion to Relate the *Donnelly Derivative Action* to the *Neal Class Action* and the *Saraceni*
14 *Derivative Action*, pursuant to which it has requested that the *Donnelly Derivative Action* be
15 reassigned to The Honorable Samuel Conti;

16 **WHEREAS**, in an effort to assure consistent rulings and decisions and the avoidance
17 of unnecessary duplication of effort, the undersigned counsel for the parties in the Polycom
18 *Derivative Actions* submit this stipulation consolidating actions; and

19 **WHEREAS**, Johnson & Weaver, LLP seeks to be designated as Lead Counsel in the
20 Polycom *Derivative Actions*, once consolidated, and Defendants take no position with respect
21 to such designation.

22 **WHEREFORE**, the parties, through their undersigned counsel, hereby agree,
23 stipulate, and respectfully request that the Court enter an Order as follows:

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1 make all work assignments in such manner as to facilitate the orderly and efficient prosecution
2 of this litigation and to avoid duplicative or unproductive effort.

3 6. The parties agree that plaintiffs' Lead Counsel will be responsible for
4 coordinating all activities and appearances on behalf of plaintiffs and for the dissemination of
5 notices and orders of this Court. The parties further agree that no motion, request for
6 discovery, or other pre-trial or trial proceedings will be initiated or filed by any plaintiffs
7 except through plaintiffs' Lead Counsel.

8 7. The parties agree that defendants' counsel may rely upon all agreements made
9 with plaintiffs' Lead Counsel, or other duly authorized representative of plaintiffs' Lead
10 Counsel, and such agreements will be binding on plaintiffs.

11 8. This Order shall apply to each purported derivative action arising out of the
12 same or substantially the same transactions or events as the Polycom Derivative Actions,
13 which is subsequently filed in, removed to, or transferred to this Court.

14 9. When a case that properly belongs as part of *In re Polycom, Inc. Derivative*
15 *Litigation*, Lead Case No. 3:13-cv-03880-SC, is hereafter filed in this Court or transferred here
16 from another court, counsel shall promptly call to the attention of the Clerk of the Court the
17 filing or transfer of any case that might properly be consolidated as part of *In re Polycom, Inc.*
18 *Derivative Litigation*, Lead Case No. 3:13-cv-03880-SC.

19 10. In the interest of efficiency and avoidance of unnecessary duplication of effort
20 or judicial resources by the Court or the parties, it is further Ordered as follows:

21 (a) Defendants are not required to respond to either complaint consolidated
22 into this action, or to the complaint in any action subsequently
23 consolidated into this action, other than an amended or consolidated
24 complaint (or complaint subsequently designated as the operative
25 complaint);

26 (b) Within thirty (30) days of the entrance of an order consolidating the
27 Polycom Derivative Actions, plaintiffs in this action shall file an
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amended or consolidated complaint (or designate an operative complaint) in this action;

(c) Within ten (10) days of plaintiffs filing of an amended or consolidated complaint (or designation of an operative complaint) in this action, plaintiffs' counsel and counsel for Defendants shall meet and confer regarding a mutually agreeable schedule and dates by which defendants must answer, move to dismiss, or otherwise respond to the amended or consolidated (or operative) complaint and file a stipulated briefing schedule with the Court for approval; and

(d) The Initial Case Management Conference in the *Donnelly* Derivative Action, currently scheduled for January 28, 2014, and the additional deadlines set forth in the Order Setting Initial Case Management Conference and ADR Deadlines (dated October 17, 2013), are hereby vacated, and the Initial Case Management Conference in the consolidated action shall instead be set for December 20, 2013, at 10:00 a.m., the date and time of the currently scheduled Initial Case Management Conference in the *Saraceni* Derivative Action.

IT IS SO STIPULATED.

1 Dated: October 29, 2013

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11 *Attorneys for Plaintiffs Ralph Saraceni and*
12 *James Donnelly*

13 Dated: October 29, 2013

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26 *Attorneys for Defendants Betsy S. Atkins,*
27 *John A. Kelley, D. Scott Mercer, William*
28 *A. Owens, Kevin T. Parker, and Nominal*
Defendant Polycom, Inc.

1 Dated: October 29, 2013

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10 *Attorneys for Defendant Andrew M. Miller*

11 *I am the ECF user whose identification and password are being used to file the*
12 *foregoing Stipulation and [Proposed] Order Consolidating Actions and Appointing Lead*
13 *Counsel. In compliance with Local Rule 5-1(i)(3), I hereby attest that concurrence in the*
14 *filing of this document has been obtained.*

15 Dated: October 29, 2013

s/ Frank J. Johnson
FRANK J. JOHNSON (SBN 174882)

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21 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

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23 Dated: 10/31, 2013

24 HON. SAMUEL CONTI
25 UNITED STATES DISTRICT COURT

