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 William A. Owens, Kevin T. Parker  
 9 and Nominal Defendant Polycom, Inc.

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

14	IN RE POLYCOM, INC. DERIVATIVE	)	Lead Case No.: 3:13-cv-3880-SC
15	LITIGATION,	)	(Derivative Action)
16	This Document Relates To:	)	<b>STIPULATION AND <del>PROPOSED</del> ORDER REGARDING PLAINTIFFS' FILING OF AN AMENDED COMPLAINT AND SETTING BRIEFING SCHEDULE FOR DEFENDANTS' RESPONSE THERE TO</b>
17	ALL ACTIONS	)	
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STIPULATION AND [PROPOSED] ORDER RE:  
 FILING OF AMENDED COMPLAINT & BRIEFING  
 SCHEDULE IN RESPONSE THERETO  
 LEAD CASE No.: 3:13-CV-3880-SC

1 Pursuant to Rule 15 of the Federal Rules of Civil Procedure and N.D. Cal. Civil Local  
2 Rules 6-2 and 7-12, the parties submit the following Stipulation and [Proposed] Order through  
3 their respective counsel of record.

4 **WHEREAS**, plaintiff Ralph Saraceni filed a shareholder derivative complaint against  
5 defendants Andrew M. Miller, Betsy S. Atkins, John A. Kelley, D. Scott Mercer,  
6 William A. Owens, and Kevin T. Parker, as well as nominal defendant Polycom, Inc.  
7 (collectively, “Defendants”) for violation of various state laws on August 21, 2013 (“*Saraceni*  
8 *Derivative Action*”) (Case No. 3:13-cv-03880-SC, ECF No. 1);

9 **WHEREAS**, plaintiff James Donnelly filed a shareholder derivative complaint against  
10 Defendants for violation of various state laws on October 16, 2013 (“*Donnelly Derivative*  
11 *Action*”) (Case No. 3:13-cv-04810-SC, ECF No. 1);

12 **WHEREAS**, on October 31, 2013, the Court entered an order (the “Consolidation Order”)  
13 which: (1) consolidated the *Saraceni Derivative Action* and the *Donnelly Derivative Action* into  
14 the above-captioned action (the “Consolidated Derivative Action”); (2) required plaintiffs  
15 Saraceni and Donnelly (together, “Plaintiffs”) to file or designate an operative complaint in the  
16 Consolidated Derivative Action within 30 days of the Consolidation Order; and (3) within 10  
17 days of such filing or designation of an operative complaint, required the parties to meet and  
18 confer regarding and file a mutually agreeable schedule and dates by which Defendants must  
19 answer, move to dismiss, or otherwise respond to the operative complaint and file a stipulated  
20 briefing schedule with the Court for approval (ECF No. 27);

21 **WHEREAS**, Plaintiffs filed a notice designating the complaint filed in the *Donnelly*  
22 *Derivative Action* (the “Operative Complaint”) as operative in the Consolidated Derivative  
23 *Action* on November 27, 2013 (ECF No. 28);

24 **WHEREAS**, on December 10, 2013, pursuant to the parties’ stipulation, the Court  
25 entered an order (the “Order Directing Briefing Schedule”) requiring Defendants to file their  
26 motion(s) to dismiss the Operative Complaint no later than February 7, 2014; Plaintiffs to file  
27 their opposition to Defendants’ motion(s) to dismiss no later than March 14, 2014; and

28 Defendants to file their reply brief(s) in support of their motion(s) to dismiss no later than  
STIPULATION AND [PROPOSED] ORDER RE: -1-  
FILING OF AMENDED COMPLAINT & BRIEFING  
SCHEDULE IN RESPONSE THERETO  
LEAD CASE NO.: 3:13-CV-3880-SC

1 March 28, 2014; and setting a hearing date on Defendants' motion(s) to dismiss for April 18,  
2 2014 at 10:00 a.m. (ECF No. 36);

3 **WHEREAS**, Defendants filed motions to dismiss the Operative Complaint on February 7,  
4 2014 (ECF Nos. 37, 40);

5 **WHEREAS**, Plaintiffs did not file an opposition to Defendants' motions to dismiss, but  
6 instead, on March 17, 2014, filed a Verified Consolidated Shareholder Derivative Complaint (the  
7 "Consolidated Complaint") (ECF No. 44);

8 **WHEREAS**, the parties have met and conferred regarding the timing of the Consolidated  
9 Complaint, and the claims and allegations therein, including the basis for Plaintiffs' new Section  
10 14(a) and corporate waste claims relating to the Polycom director's compensation and Polycom's  
11 2012 Proxy disclosures related thereto (the "2012 Proxy-Related Allegations");

12 **WHEREAS**, following such discussions, Plaintiffs have agreed to withdraw the  
13 Consolidated Complaint, and instead file an amended complaint that shall serve as the new  
14 operative complaint in this action, and which shall omit the 2012 Proxy-Related Allegations;

15 **WHEREAS**, Defendants have therefore agreed to withdraw their currently pending  
16 motions to dismiss the Operative Complaint as moot in light of Plaintiffs' intent to file an  
17 amended complaint;

18 **WHEREAS**, the parties have agreed to a schedule as follows:

- 19 (1) Plaintiffs shall file an amended complaint, which omits the 2012 Proxy-Related  
20 Allegations, no later than April 4, 2014;
- 21 (2) Defendants shall move to dismiss the amended complaint no later than May 23,  
22 2014;
- 23 (3) Plaintiffs shall file their opposition(s) to Defendants' motion(s) to dismiss the  
24 amended complaint no later than July 11, 2014;
- 25 (4) Defendants shall file their reply brief(s) in support of their motion(s) to dismiss the  
26 amended complaint no later than August 8, 2014; and

1 (5) The hearing date for Defendants' motion(s) to dismiss the amended complaint  
2 shall be set for August 22, 2014 at 10:00 a.m., or the soonest date thereafter on  
3 which the Court is available to hear the motion(s);

4 **WHEREAS**, the Order Directing Briefing Schedule also set an Initial Case Management  
5 Conference in the Consolidated Derivative Action for April 18, 2014 at 10:00 a.m. (ECF No. 36);  
6 and

7 **WHEREAS**, subject to the Court's approval, the parties agree that the Initial Case  
8 Management Conference should be continued until after Defendants respond to the amended  
9 complaint.

10 **NOW, THEREFORE**, subject to the Court's approval, the parties hereby stipulate and  
11 agree as follows:

- 12 (1) The deadline set forth in the Order Directing Briefing Schedule requiring  
13 Defendants' to file reply brief(s) in support of their motion(s) to dismiss the  
14 Operative Complaint by March 28, 2014 shall be vacated;
- 15 (2) The hearing on Defendants' motions to dismiss the Operative Complaint currently  
16 scheduled for April 18, 2014 at 10:00 a.m. shall be taken off calendar;
- 17 (3) Plaintiffs shall file an amended complaint in the Consolidated Derivative Action,  
18 which omits the 2012 Proxy-Related Allegations, no later than April 4, 2014;
- 19 (4) Defendants shall move to dismiss the amended complaint no later than May 23,  
20 2014;
- 21 (5) Plaintiffs shall file their opposition(s) to Defendants' motion(s) to dismiss the  
22 amended complaint no later than July 11, 2014;
- 23 (6) Defendants shall file their reply brief(s) in support of their motion(s) to dismiss the  
24 amended complaint no later than August 8, 2014;
- 25 (7) The hearing date for Defendants' motion(s) to dismiss the amended complaint will  
26 be set for August 22, 2014 at 10:00 a.m., or the soonest date thereafter on which  
27 the Court is available to hear the motion(s); and

1 (8) The Initial Case Management Conference in the Consolidated Derivative Action  
2 currently scheduled for April 18, 2014 at 10:00 a.m. is hereby vacated, and the  
3 Initial Case Management Conference in the Consolidated Derivative Action shall  
4 instead be set for August 22, 2014 at 10:00 a.m., or to such other date and time as  
5 this Court may order.

6 **IT IS SO STIPULATED.**

7 Dated: March 27, 2013

Respectfully submitted,

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12 By: /s/ Keith E. Eggleton

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

17 Dated: March 27, 2013

By: /s/ Paul T. Friedman

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23 *Attorneys for Defendant Andrew M. Miller*

1 Dated: March 27, 2013

By: /s/ Shawn E. Fields  
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*Attorneys for Plaintiffs*

11 *I, Keith E. Eggleton, am the ECF user whose ID and password are being used to file this*  
12 *Stipulation and [Proposed] Regarding Briefing Plaintiffs' Filing of An Amended Complaint and*  
13 *Setting Briefing Schedule for Defendants' Response Thereto. In compliance with Civil Local*  
14 *Rule 5-1(i)(3), I hereby attest that Paul T. Friedman, and Shawn E. Fields have concurred in*  
15 *this filing.*

16 **~~PROPOSED~~ ORDER**

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

18 Dated: 03/27, 2014

