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

13 GERALD DOUGLAS, Individually and On) Lead Case No. 16-cv-921-WHO
14 Behalf of All Others Similarly Situated,) (Related Cases: 4:16-cv-01237-WHO and
15) 3:16-cv-1253-WHO)
16)
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18)
19)
20) **JOINT STIPULATION AND ORDER TO**
21) **STAY PROCEEDINGS**
22)
23) Judge: Honorable William H. Orrick
24)
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26)
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28)
Plaintiff,)
v.)
FRANK WITNEY, NELSON CHAN, GARY)
GUTHART, JAMI NACHTSHEIM,)
RICCARDO PIGLIUCCI, MERILEE RAINES,)
ROBERT TRICE, and AFFYMETRIX, INC.)
Defendants.)

29 **STIPULATION AND ORDER**

30 IT IS HEREBY STIPULATED by and between PLAINTIFF GERALD DOUGLAS
31 (“Plaintiff”) and DEFENDANTS FRANK WITNEY, NELSON CHAN, GARY GUTHART,
32 JAMI NACHTSHEIM, RICCARDO PIGLIUCCI, MERILEE RAINES, ROBERT TRICE, and
33 AFFYMETRIX, INC. (collectively, the “Defendants”), (Plaintiff and Defendants are to be
34 collectively referred to as the “Parties”), by and through their attorneys of record, that good cause
35 exists for the Court to stay the proceedings in the above-captioned cases based on the following:
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3:16-cv-00921-WHO

STIPULATION AND ORDER TO STAY PROCEEDINGS

1 WHEREAS, on February 24, 2016, Plaintiff Gerald Douglas filed a putative class action
2 (“Douglas action”) in this Court against Affymetrix, Inc. (“Affymetrix”) and members of the
3 board of Affymetrix (the “Board” or the “Individual Defendants”) alleging violations of Section
4 14(a) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. §§
5 78n(a), 78t(a), and SEC Rule 14a-9, 17 C.F.R. 240.14a-9, and breaches of fiduciary duties in
6 connection with the proposed merger between Affymetrix and Thermo Fisher Scientific Inc.
7 (“Thermo Fisher”). *Douglas* Docket No. 1, ¶ 1.

8 WHEREAS, on March 14, 2016, Plaintiff Steven Merola filed a putative class action
9 (“Merola action”), Case No. 16-cv-01237-WHO in this Court, against Affymetrix and the Board
10 for violations of Section 14(a) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange
11 Act”), 15 U.S.C. §§ 78n(a), 78t(a), and SEC Rule 14a-9, 17 C.F.R. 240.14a-9, and breaches of
12 fiduciary duties in connection with the proposed merger between Affymetrix and Thermo
13 Fisher. *Merola* Docket No. 1, ¶ 1.

14 WHEREAS, also on March 14, 2016, Plaintiff Jeffrey S.L. Cheah filed a putative class
15 action (“Cheah action”), Case No. 16-cv-01253-WHO in this Court, against Affymetrix and the
16 Board for violations of Section 14(a) and 20(a) of the Exchange Act, 15 U.S.C. §§78n, 78t(a),
17 and SEC Rule 14a-9, 17 C.F.R. 240.14a-9, in connection with the Board’s agreement to sell
18 Affymetrix to Thermo Fisher (the “Proposed Transaction”). Plaintiff Cheah also brought this
19 action against the Board for breaches of fiduciary duties owed to Affymetrix’s stockholders, as
20 well as against Affymetrix, Thermo Fisher and White Birch Merger Co. for aiding and abetting
21 such breaches by Affymetrix’s directors, in connection with the Proposed Transaction. *Cheah*
22 Docket No. 1, ¶ 1.

23 WHEREAS, on May 4, 2016, the Court adjourned the Initial Case Management
24 Conference in the Douglas action until July 19, 2016 and adjourned indefinitely the Defendants’
25 deadline to answer, move to dismiss, or otherwise respond to the Complaint, pursuant to the
26 parties’ stipulation;

1 WHEREAS, on June 29, 2016, the Parties informed the Court that they had reached a
2 tentative settlement in the Douglas action and Related Cases (defined below) and concluded
3 conducting confirmatory discovery, which included three depositions;

4 WHEREAS, on June 29, 2016, counsel for Plaintiff Douglas also informed the Court that
5 the parties expect to be able to present the stipulation of settlement and motion for preliminary
6 approval within 30 days and requested that all deadlines be vacated;

7 WHEREAS, on July 8, 2016, Plaintiff Douglas filed an administrative motion to relate the
8 Merola action and the Cheah action (the "Related Cases") to the Douglas action;

9 WHEREAS, on July 13, 2016, the Court further adjourned the Initial Case Management
10 Conference in the Douglas action until August 9, 2016, pursuant to the Parties' stipulation;

11 WHEREAS, on July 14, 2016, the Court issued an Order relating the above-captioned
12 cases;

13 WHEREAS, in view of the foregoing, and in particular the Parties' agreement to settle
14 these actions subject to further documentation and the Court's approval, the Parties respectfully
15 request that this Court stay all proceedings in the Douglas action pending submission of a
16 stipulation of settlement and motion for preliminary approval to this Court. The parties anticipate
17 filing similar stipulations in the Merola and Cheah actions in the near future.

18 Stipulated by and between the following:

19 DATED: July 15, 2016

FARUQI & FARUQI, LLP

By: */s/ Barbara A. Rohr*

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Counsel for Plaintiff

1 DATED: July 15, 2016

DAVIS POLK & WARDWELL, LLP

2 By: */s/ Neal A. Potischman*

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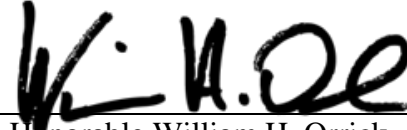
*Counsel for Defendants Affymetrix, Inc. and
Individual Defendants*

11 **ORDER**

12 **IT IS HEREBY ORDERED that:**

13 All proceedings in *Douglas v. Witney, et al.*, Case No. 16-cv-921-WHO, are stayed.

14 DATED: July 20, 2016

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16 Honorable William H. Orrick
17 United States District Judge

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CERTIFICATE OF SERVICE

I hereby certify that on July 15, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List.

Dated: July 15, 2016

By: /s/ Barbara A. Rohr
Barbara A. Rohr