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12 Counsel for Plaintiff Thomas Beebe and
 13 Christopher Borrelli and [Proposed] Co-Lead
 14 Counsel for Plaintiffs

15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17 OAKLAND DIVISION

18 THOMAS BEEBE, Derivatively on Behalf of)
 19 ACCURAY INCORPORATED,)
 20)
 21 Plaintiff,)
 22 vs.)
 23 EUAN S. THOMSON, WAYNE WU, LI YU,)
 24 ROBERT S. WEISS, ELIZABETH DAVILA,)
 25 JOHN P. WAREHAM, ROBERT E.)
 26 MCNAMARA, TED. T.C. TU, and JOHN R.)
 27 ADLER, JR.,)
 28 Defendants,)
 and)
 ACCURAY INCORPORATED, a Delaware)
 corporation,)
 Nominal Defendant.)

Case No. C 09 05580 CW

 STIPULATION CONSOLIDATING
 ACTIONS, APPOINTING CO-LEAD
 COUNSEL, AND RELATED MATTERS
 AND ORDER THEREON

[Caption continued on following page]

1 ERIC BACHINSKI, Derivatively on Behalf of)
ACCURAY INCORPORATED,)

Case No. C 09 05639 CW

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Plaintiff,

vs.

EUAN S. THOMSON, ROBERT E.
MCNAMARA, WADE B. HAMPTON, TED
TU, WAYNE WU, JOHN R. ADLER, JR.,
ROBERT S. WEISS, ELIZABETH DAVILA,
LI YU, JOHN P. WAREHAM, LOUIS J.
LAVIGNE, JR., DENNIS L. WINGER, and
DOES 1-25, inclusive,

Defendants,

-and-

ACCURAY INCORPORATED, a Delaware
corporation,

Nominal Defendant.

CHRISTOPHER BORRELLI, Derivatively on)
Behalf of ACCURAY INCORPORATED,)

Case No. C 09 05655 CW

Plaintiff,

vs.

EUAN S. THOMSON, WAYNE WU, LI YU,
ROBERT S. WEISS, ELIZABETH DAVILA,
JOHN P. WAREHAM, ROBERT E.
MCNAMARA, TED. T.C. TU, and JOHN R.
ADLER, JR.,

Defendants,

and

ACCURAY INCORPORATED, a Delaware
corporation,

Nominal Defendant.

1 WHEREAS, there are presently three related shareholder derivative actions against certain of
2 the officers and directors of Accuray, Inc. ("Accuray") on file in this Court;

3 WHEREAS, in an effort to assure consistent rulings and decisions and the avoidance of
4 unnecessary duplication of effort, all of the counsel for the parties in the related Accuray shareholder
5 derivative actions currently on file in this Court enter into this stipulation. The counsel are: (1)
6 Robbins Umeda LLP on behalf of plaintiff Thomas Beebe; (2) Robbins Umeda LLP and The
7 Kendall Law Group LLP on behalf of plaintiff Christopher Borrelli; (3) Johnson Bottini LLP on
8 behalf of plaintiff Eric Bachinski; and (4) Wilson Sonsini Goodrich & Rosati P.C. on behalf of
9 nominal defendant Accuray, Inc. and individual defendants Euan S. Thomson, Wayne Wu, Li Yu,
10 Robert S. Weiss, Elizabeth Davila, John P. Wareham, Robert E. McNamara, John R. Adler, Jr.,
11 Wade B. Hampton, Louis J. Lavigne, Jr., and Dennis L. Winger;

12 WHEREAS, the parties agree that it would be duplicative and wasteful of the Court's
13 resources for defendants named in plaintiffs' shareholder derivative actions to have to respond to the
14 individual complaints prior to the agreed upon consolidation.

15 NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED by plaintiffs and
16 defendants, through their respective counsel of record, as follows:

17 1. The following actions are hereby related and consolidated for all purposes, including
18 pre-trial proceedings and trial:

<u>Case Name</u>	<u>Case Number</u>	<u>Date Filed</u>
<i>Beebe v. Thomson, et al.</i>	No. C 09 05580 CW	November 24, 2009
<i>Bachinski v. Thomson, et al.</i>	No. C 09 05639 BZ	November 30, 2009
<i>Borrelli v. Thomson, et al.</i>	No. C 09 05655 JF	December 1, 2009

24 2. Every pleading filed in the consolidated action, or in any separate action included
25 herein, shall bear the following caption:
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1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

3 IN RE ACCURAY, INC. SHAREHOLDER) Lead Case No. C 09 05580 CW
4 DERIVATIVE LITIGATION)

5 This Document Relates To:)

6 ALL ACTIONS)
7)

8 3. The files of the consolidated action shall be maintained in one file under Master File
9 No. C 09 05580 CW.

10 4. The fact that these cases have been consolidated shall not be advanced or used as a
11 factor in the Court's consideration of defendants' motion to stay the action in light of the state
12 derivative action.

13 5. The dates set forth in this Court's Order dated December 16, 2009, in *Beebe v.*
14 *Thomson, et al.*, Case No. 4:09-cv-05580-CW, shall be amended as set forth in this paragraph.
15 Plaintiffs shall either designate a complaint as operative or file a Consolidated Derivative Complaint
16 ("Consolidated Complaint") by December 24, 2009. If filed, the Consolidated Complaint shall be
17 the operative complaint and shall supersede all complaints filed in any of the actions consolidated
18 herein. Defendants shall file an answer or a responsive motion and their motion to stay by January
19 14, 2010. In the event that defendants file any motions directed at the operative complaint or
20 Consolidated Complaint, plaintiffs shall file their opposition by January 28, 2010. If defendants file
21 a reply to plaintiffs' opposition, they will do so by February 4, 2010. The Court will hear the
22 motions on **April 29, 2010, at 2:00 p.m**

23 6. Should any defendant challenge plaintiffs' standing to maintain this derivative action
24 on the grounds that plaintiffs failed to satisfy the requirements of Cal. Corp. Code §800 and/or
25 Delaware Chancery Court Rule 23.1 by failing to plead facts sufficient to raise a reasonable doubt
26 that a pre-litigation demand on Accuray's Board of Directors would have been futile, the Court will
27 determine this issue as it relates to the designated complaint or Consolidated Complaint based on the
28

1 membership of the Board on the date plaintiff Beebe filed his original complaint (November 24,
2 2009).

3 7. The Lead Plaintiffs for these consolidated actions are Thomas Beebe, Eric Bachinski,
4 and Christopher Borrelli.

5 8. The Co-Lead Counsel for plaintiffs for the conduct of these consolidated actions are:

6 ROBBINS UMEDA LLP
7 MARC M UMEDA
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9 DANIEL R. FORDE
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14 JOHNSON BOTTINI, LLP
15 FRANK J. JOHNSON
16 FRANCIS A. BOTTINI, JR.
17 DEREK J. WILSON
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19 San Diego, CA 92101
20 Telephone: (619) 230-0063
21 Facsimile: (619) 238-0622

22 and

23 KENDALL LAW GROUP, LLP
24 HAMILTON P. LINDLEY
25 3232 McKinney, Suite. 700
26 Dallas, TX 75204
27 Telephone: (214) 744-3000
28 Facsimile: (214) 744-3015

9. Plaintiffs' Co-Lead Counsel shall have sole authority to speak for plaintiffs in matters
regarding pre-trial procedure, trial and settlement and shall make all work assignments in such
manner as to facilitate the orderly and efficient prosecution of this litigation and to avoid duplicative
or unproductive effort.

10. Plaintiffs' Co-Lead Counsel shall be responsible for coordinating all activities and
appearances on behalf of plaintiffs. No motion, request for discovery or other pre-trial or trial
proceedings shall be initiated or filed by any plaintiff except through plaintiffs' Co-Lead Counsel.

1 11. Plaintiffs' Co-Lead Counsel shall be available and responsible for communications to
2 and from this Court, including distributing orders and other directions from the Court to counsel.
3 Plaintiffs' Co-Lead Counsel shall be responsible for creating and maintaining a master service list of
4 all parties and their respective counsel.

5 12. Defendants' counsel may rely upon all agreements made with plaintiffs' Co-Lead
6 Counsel, or other duly authorized representative of plaintiffs' Co-Lead Counsel, and such agreements
7 shall be binding on all plaintiffs.

8 13. Defendants take no position as to the appointment of Lead Plaintiffs or Co-Lead
9 Counsel.

10 14. This Order shall apply to each case, arising out of the same or substantially the same
11 transactions or events as these cases, which is subsequently filed in, remanded to or transferred to
12 this Court.

13 15. When a case which properly belongs as part of the *In re Accuray, Inc. Shareholder*
14 *Derivative Litigation*, Lead Case No. C 09 05580 CW, is hereafter filed in the Court or transferred
15 here from another court, this Court requests the assistance of counsel in calling to the attention of the
16 clerk of the Court the filing or transfer of any case which might properly be consolidated as part of
17 the *In re Accuray, Inc. Shareholder Derivative Litigation*, Lead Case No. C 09 05580 CW, and
18 counsel are to assist in assuring that counsel in subsequent actions receive notice of this Order.

19 16. Defendants are not required to respond to the complaint in any action consolidated
20 into this action, other than a consolidated complaint or a complaint designated as the operative
21 complaint.

22 17. Defendants' counsel shall appear for and accept service on behalf of all defendants
23 not already served, with the exception of defendant Ted T.C. Tu.

24 DATED: December 17, 2009

ROBBINS UMEDA LLP
MARC M UMEDA
KEVIN A. SEELY
DANIEL R. FORDE

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s/Marc M. Umeda
MARC M. UMEDA
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Counsel for Plaintiff Thomas Beebe and
Christopher Borrelli and [Proposed] Co-Lead
Counsel for Plaintiffs

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Facsimile: (214) 744-3015

Counsel for Plaintiff Christopher Borrelli and
[Proposed] Co-Lead Counsel for Plaintiffs

DATED: December 17, 2009

JOHNSON BOTTINI, LLP
FRANK J. JOHNSON
FRANCIS A. BOTTINI, JR.
DEREK J. WILSON

s/Frank J. Johnson
FRANK J. JOHNSON

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Counsel for Plaintiff Bachinski and [Proposed]
Co-Lead Counsel for Plaintiffs

DATED: December 17, 2009

WILSON SONSINI GOODRICH
& ROSATI, P.C.
IGNACIO SALCEDA

s/Ignacio E. Saleda
IGNACIO E. SALCEDA

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Counsel for nominal defendant Accuray, Inc.

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and individual defendants Euan S. Thomson,
Wayne Wu, Li Yu, Robert S. Weiss, Elizabeth
Davila, John P. Wareham, Robert E.
McNamara, John R. Adler, Jr., Wade B.
Hampton, Louis J. Lavigne, Jr., Dennis L.
Winger

I, Marc M. Umeda, am the ECF User whose ID and password are being used to file this
Stipulation Consolidating Actions, Appointing Co-Lead Counsel, and Related Matters and
[Proposed] Order Thereon. In compliance with General Order No. 45, X.B., I hereby attest that
Frank J. Johnson and Ignacio E. Salceda have concurred in this filing.

s/ Marc M. Umeda
MARC M. UMEDA

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

12/23/09



DATED

HONORABLE CLAUDIA WILKEN
UNITED STATES MAGISTRATE JUDGE

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on December 23, 2009, I electronically filed the foregoing with the Clerk
3 of Court using the CM/ECF system which will send notification of such filing to the e-mail
4 addresses on the Electronic Mail Notice List. I hereby certify that I have sent notification and served
5 a copy of the filing via U.S. mail to the following parties listed below.

6 **VIA U.S. MAIL**

7
8 **KENDALL LAW GROUP, LLP**
9 **HAMILTON P. LINDLEY**
3232 McKinney, Ste. 700
Dallas, TX 75204

JOHNSON BOTTINI, LLP
FRANK J. JOHNSON
501 West Broadway, Suite 1720
San Diego, CA 92101

10
11
12 I certify under penalty of perjury under the laws of the United States of America that the
13 foregoing is true and correct. Executed on December 17, 2009.

14
15 s/ Marc M. Umeda
16 _____
MARC M. UMEDA