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9 UNITED STATES DISTRICT COURT  
 10 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND DIVISION

11 IN RE ACCURAY, INC. SHAREHOLDER )  
 12 DERIVATIVE LITIGATION )

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Lead Case No. C 09 05580 CW

13 This Document Relates To: )  
 14 ALL ACTIONS )

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) STIPULATION AND ORDER REGARDING  
 ) FILING OF CONSOLIDATED COMPLAINT  
 ) AND BRIEFING SCHEDULE AS  
 ) **MODIFIED**

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1           WHEREAS, on February 5, 2010, defendants filed a motion to stay and to dismiss this  
2 consolidated federal derivative action (the "Action"), wherein they sought a limited stay of this  
3 Action and raised arguments regarding continuous ownership, demand futility, and failure to state a  
4 claim with regard to each count in the Consolidated Verified Shareholder Derivative Complaint (the  
5 "Complaint");

6           WHEREAS, on March 8, 2010, the defendants filed notice that they have withdrawn their  
7 request for a limited stay of this Action because the earlier filed state court action, *Israni v.*  
8 *Thomson, et al.*, Case No. 1-09-CV-149157 (Santa Clara County Superior Court), has been  
9 voluntarily dismissed;

10           WHEREAS, the hearing on the defendants' pending motion to dismiss the Complaint is  
11 scheduled to be heard on April 29, 2010;

12           WHEREAS, on March 16, 2010, the plaintiff in the above-referenced state court action,  
13 Sanjay Israni, filed a shareholder derivative complaint ("Israni Complaint") in this District Court,  
14 captioned *Israni v. Thomson, et al.*, No. C 10-01117 WHA. The Israni Complaint contains  
15 allegations arising out of the same or substantially the same transactions or events as this Action;

16           WHEREAS, it is anticipated by the parties that the Israni Complaint will be consolidated  
17 with this Action pursuant to paragraphs 14 and 15 of the December 23, 2009 Stipulation  
18 Consolidating Actions, Appointing Co-Lead Counsel, and Related Matters and Order Thereon;

19           WHEREAS, the Israni Complaint is substantively different from the operative Complaint in  
20 this Action in the following ways, among others: (i) plaintiff Israni's pleading regarding continuous  
21 ownership of Accuray, Inc. ("Accuray") stock is different; and (ii) plaintiff Israni asserts additional  
22 causes of action related to insider selling, which allegations are not in the operative Complaint for  
23 this Action;

24           WHEREAS, the parties agree that the Israni Complaint and consolidation into this Action  
25 will affect defendants' pending motion to dismiss; and

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1 WHEREAS, the parties agree that in order to conserve resources and minimize duplication,  
2 the parties need time to address the issues raised by the anticipated filing and consolidation of the  
3 Israni Complaint;

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

6 1. Plaintiffs shall file an amended consolidated complaint within 20 days of entry of the  
7 order on this stipulation;

8 2. If defendants respond by motion, they shall file a single consolidated motion within  
9 30 days of the filing of an amended consolidated complaint;

10 3. Plaintiffs shall file a single consolidated opposition within 30 days of the filing of the  
11 motion;

12 4. Defendants shall file a single consolidated reply within 20 days of the filing of the  
13 opposition;

14 5. The April 29, 2010 hearing on the motion to dismiss shall be taken off calendar and  
15 continued to a date convenient for the Court, consistent with the above proposed briefing schedule;  
16 and

17 6. Should any defendant challenge plaintiffs' standing to maintain this derivative action  
18 on the grounds that plaintiffs failed to satisfy the requirements of Federal Rule of Civil Procedure  
19 23.1 and/or Delaware Chancery Court Rule 23.1, by failing to plead facts sufficient to raise a  
20 reasonable doubt that a pre-litigation demand on Accuray's Board would have been futile, the Court  
21 will determine this issue as it relates to the amended consolidated complaint based on the  
22 membership of the Board on the date the Israni Complaint was filed (March 16, 2010).

23 DATED: March 17, 2010

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27 s/Kevin A. Seely  
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Counsel for Nominal Defendant Accuray, Inc.  
and individual defendants Euan S. Thomson,  
Wayne Wu, Li Yu, Robert S. Weiss, Elizabeth  
Davila, John P. Wareham, Robert E.  
McNamara, and John R. Adler, Jr.

I, Kevin A. Seely, am the ECF User whose ID and password are being used to file this  
Stipulation and [Proposed] Order Regarding Filing of Consolidated Complaint and Briefing  
Schedule. In compliance with General Order No. 45, X.B., I hereby attest that Ignacio E. Salceda  
has concurred in this filing.

s/ Kevin A. Seely  
KEVIN A. SEELY

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**ORDER**

PURSUANT TO STIPULATION, IT IS SO ORDERED. A HEARING ON A MOTION TO DISMISS WILL BE HELD ON JULY 1, 2010 AT 2:00 P.M. IF NO MOTION IS FILED, A CASE MANAGEMENT CONFERENCE WILL BE HELD ON THAT DATE.

3/19/2010  
DATED \_\_\_\_\_

  
\_\_\_\_\_  
HONORABLE CLAUDIA WILKEN  
UNITED STATES DISTRICT JUDGE

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