

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MARK NATHANSON, Individually and  
On Behalf of All Others Similarly  
Situated,

Plaintiff,

v.

POLYCOM, INC., ANDREW M. MILLER,  
MICHAEL R. KOUREY, and ERIC F.  
BROWN,

Defendants.

No. 13-3476-YGR

**[PROPOSED] ORDER GRANTING  
PRELIMINARY APPROVAL OF  
SETTLEMENT**

**\*AS MODIFIED TO INCLUDE  
DATES\***

**WHEREAS,**

A. This Action<sup>1</sup> was originally commenced on or about July 26, 2013. Plaintiff Mark Nathanson was appointed Lead Plaintiff on December 13, 2013, and the Court approved his choice of counsel, Pomerantz LLP (“Pomerantz”). An amended complaint (the “First Amended Complaint”) was filed on February 24, 2014, asserting claims under Sections 10(b) and 20(a) of the Securities Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the Securities and Exchange Commission (17 C.F.R. § 240.10b-5) against Polycom, Inc., Andrew M. Miller, Michael R. Kourey, and Eric F. Brown.

B. On April 3, 2015, the Court entered an order granting in part and denying in part Defendants’ motions to dismiss the First Amended Complaint and granting Lead Plaintiff leave to amend his complaint within thirty days.

C. On May 4, 2015, Lead Plaintiff filed his Second Amended Complaint for Violations of the Federal Securities Laws (the “Second Amended Complaint” or “Complaint”), asserting claims under §§ 10(b), 14(a), and 20(a) of the Exchange Act and Rules 10b-5, 14a-3 and 14a-9 promulgated thereunder. Defendants filed motions to dismiss the Second Amended Complaint, which Lead Plaintiff opposed.

<sup>1</sup> Capitalized terms herein shall have the same definitions as set forth in the Stipulation and Agreement of Settlement (the “Stipulation”).

1 D. On January 8, 2016, Lead Plaintiff, acting on behalf of himself and a proposed  
2 Settlement Class, entered into a Stipulation with the Settling Defendants to settle this Action on  
3 the terms provided therein. *See* Exhibit A hereto.

4 E. Lead Plaintiff has applied to the Court pursuant to Rule 23(e) of the Federal Rules  
5 of Civil Procedure for an order approving the Settlement in accordance with the terms of the  
6 Stipulation and for complete dismissal of this Action with prejudice.

7 F. The Court having reviewed and considered Lead Plaintiff's Unopposed Motion  
8 for Preliminary Approval of Class Action Settlement and Notice to the Settlement Class (the  
9 "Motion"), as well as all papers submitted in support thereof; the terms and conditions of the  
10 proposed Settlement as set forth in the Stipulation and the terms of which are incorporated  
11 herewith; and all other prior proceedings in this Action, and good cause for this Order having  
12 been shown:

13  
14 **NOW, THEREFORE, IT IS HEREBY ORDERED:**

15 1. The provisions of the Stipulation, including definitions of the terms used therein,  
16 are hereby incorporated by reference as through fully set forth herein. All capitalized terms used  
17 herein have the meanings set forth and defined in the Stipulation.

18 2. This Court has jurisdiction over the subject matter of this Action and over all  
19 parties to this Action, including Settlement Class Members.

20 3. The Court preliminarily approves the Settlement and the proposed Plan of  
21 Allocation described in the Notice as fair, reasonable and adequate, pending a final settlement  
22 and fairness hearing (the "Settlement Hearing"). The Court preliminarily finds that the proposed  
23 Settlement should be approved as: (i) the result of serious, extensive arm's-length and non-  
24 collusive negotiations; (ii) falling within a range of reasonableness warranting final approval;  
25 (iii) having no obvious deficiencies; (iv) not improperly granting preferential treatment to the  
26 Lead Plaintiff or segments of the Settlement Class; and (v) warranting notice of the proposed  
27 Settlement at the Settlement Hearing described below.  
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**Conditional Certification of the Class**

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2 4. For purposes of settlement only, and pursuant to Federal Rule of Civil Procedure  
3 23(a) and (b)(3), this Action is conditionally certified as a class action on behalf of the following  
4 persons (the “Settlement Class” or the “Class”):

5 All persons or entities that purchased Polycom securities on the U.S.  
6 exchanges or by other means involving transactions in the United States  
7 between January 20, 2011 and July 23, 2013 (both dates inclusive). Excluded  
8 from the Settlement Class are Defendants, the current officers and directors of  
9 Polycom, the former officers and directors of Polycom, and members of any  
10 of their immediate families and their legal representatives, heirs, successors or  
11 assigns and any entity in which Defendants have, or have had, a controlling  
interest. Also excluded from the Settlement Class are any persons or entities  
who exclude themselves by filing a request for exclusion in accordance with  
the requirements set forth in the Notice.

12 5. The Court preliminarily finds that the prerequisites for a class action under  
13 Rule 23 (a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied, and certifies a  
14 class solely for purposes of this Settlement, finding that: (a) the number of Settlement Class  
15 Members is so numerous that joinder of all members thereof is impracticable; (b) there are  
16 questions of law and fact common to the Settlement Class; (c) the claims of the Lead Plaintiff are  
17 typical of the claims of the Settlement Class; (d) Lead Plaintiff has fairly and adequately  
18 represented the interests of the Settlement Class; (e) the questions of law and fact common to the  
19 members of the Settlement Class predominate over any questions affecting only individual  
20 members of the Settlement Class; and (f) a class action is superior to other available methods for  
21 the fair and efficient adjudication of the controversy.

22 6. Based on the finding that Lead Plaintiff has fairly and adequately represented the  
23 interests of the Settlement Class, the Court conditionally appoints Lead Plaintiff as the class  
24 representative for the Settlement Class. The Court finds that Lead Counsel has fairly and  
25 adequately represented the interests of the Settlement Class, and conditionally appoints Lead  
26 Counsel as class counsel pursuant to Rule 23(g) of the Federal Rules of Civil Procedure. These  
27 conditional appointments are solely for purposes of effectuating the Settlement.  
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1 7. If the Stipulation is terminated or is not consummated for any reason, the  
2 foregoing conditional certification of the Class and appointment of the Class Plaintiff shall be  
3 void and of no further effect and the parties to the Stipulation shall be returned to the status each  
4 occupied before entry of this Order without prejudice to any legal argument that any of the  
5 parties to the Stipulation might have asserted in the Action.

6 8. The Court approves the appointment of Huntington National Bank as the Escrow  
7 Agent to manage the Settlement Fund for the benefit of the Settlement Class.

8 9. The Court approves the appointment of Garden City Group LLC as the Settlement  
9 Administrator to supervise and administer the notice procedure and the processing of claims.

10 **Stay Order**

11 10. The Court orders the stay of any pending litigation and enjoins the initiation of  
12 any new litigation by any Settlement Class Member in any court, arbitration, or other tribunal  
13 that includes any Settlement Class Claims against the Released Parties generally and the above-  
14 named Defendants specifically.

15 **Form and Timing of Notice**

16 11. The Court hereby approves, as to form and content, the proposed Notice,  
17 substantially in the form of Exhibit B hereto, and directs that as soon as practicable after entry of  
18 this Order, but no later than twenty-one (21) days after entry of this Order granting preliminary  
19 approval, the Settlement Administrator shall provide the Notice to each known Settlement Class  
20 Member via U.S. mail, postage pre-paid. Polycom shall cooperate in the identification of  
21 members of the Settlement Class by producing reasonably available information from its  
22 shareholder transfer records or transfer agent. Lead Counsel shall, at or before the Settlement  
23 Hearing, file with the Court proof of mailing of the Notice.

24 12. Banks, brokerage firms, institutions, and other persons who are nominees who  
25 purchased or otherwise acquired Polycom securities for the beneficial interest of other persons  
26 during the Settlement Class Period are directed to, within ten (10) days after receipt of the  
27 Notice: either (a) send the Notice and the Proof of Claim form to all beneficial owners of  
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1 Polycorn securities purchased or otherwise acquired during the Settlement Class Period; or (b)  
2 send a list of the names and addresses of such beneficial owners to the Settlement Administrator.  
3 The Settlement Administrator shall provide the Notice to each Settlement Class Member  
4 identified through point (b) of this Paragraph via U.S. mail, postage pre-paid, no later than sixty  
5 (60) days prior to the Settlement Hearing.

6 13. The cost of providing the Notice to the Settlement Class as specified in this Order  
7 shall be paid as set forth in the Stipulation.

8 14. The Court approves the proposed Proof of Claim substantially in the form of  
9 Exhibit C hereto.

10 15. The Court hereby approves, as to form and content, the proposed form Publication  
11 Notice, substantially in the form of Exhibit D hereto, and directs that no more than twenty-one  
12 days after entry of this Order granting preliminary approval Lead Counsel shall cause such  
13 Publication Notice to be published on a national business Internet newswire. Lead Counsel shall,  
14 at or before the Settlement Hearing, file with the Court proof of publication of the Publication  
15 Notice.  
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17 16. This Court preliminarily finds that the distribution of the Notice and the  
18 publication of the Publication Notice, and the notice methodology, contemplated by the  
19 Stipulation and this Order:

- 20 a) Constitute the best practicable notice to members of the Settlement Class  
21 under the circumstances of this Action;
- 22 b) Is reasonably calculated, under the circumstances, to apprise members of the  
23 Settlement Class of: (i) the proposed Settlement of this Action; (ii) their right  
24 to exclude themselves from the Settlement Class; (iii) their right to object to  
25 any aspect of the proposed Settlement; (iv) their right to appear at the  
26 Settlement Hearing, either on their own or through counsel hired at their own  
27 expense, if they did not exclude themselves from the Settlement Class; and (v)  
28 the binding effect of the proceedings, rulings, orders, and judgments in this

1 Action, whether favorable or unfavorable, on all persons not excluded from  
2 the Settlement Class;

3 c) Is reasonable and constitutes due, adequate, and sufficient notice to all persons  
4 entitled to be provided with notice; and

5 d) Fully satisfies all applicable requirements of the Federal Rules of Civil  
6 Procedure (including Rules 23(c) and (d)), the United States Constitution  
7 (including the Due Process Clause), the Securities Exchange Act of 1934, 15  
8 U.S.C. § 78u-4(a)(7), the Private Securities Litigation Reform Act of 1995,  
9 the Rules of Court, and any other applicable law.

10 **Participation and Opt Out**

11 17. Settlement Class Members who wish to make a claim on the Settlement Fund  
12 shall complete and submit the Proof of Claim and Release form in accordance with the  
13 instructions contained in the Notice. Unless the Court orders otherwise, all Proofs of Claim and  
14 Release must be submitted no later than August 23, 2016. Any Settlement Class Member who  
15 does not submit a Proof of Claim and Release within the time provided shall be barred from  
16 sharing in the distribution of the proceeds of the Net Settlement Fund, unless otherwise ordered  
17 by the Court, but shall nevertheless be bound by any final judgment entered by the Court.  
18 Notwithstanding the foregoing, Lead Counsel shall have the discretion to accept late-submitted  
19 claims for processing by the Settlement Administrator so long as distribution of the Net  
20 Settlement Fund is not materially delayed thereby.

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22 18. Any person falling within the definition of the Settlement Class may seek to be  
23 excluded from the Settlement Class by submitting to the Settlement Administrator a request for  
24 exclusion (“Request for Exclusion”), which complies with the requirements set forth in the  
25 Notice and is postmarked no later than twenty-eight (28) days prior to the date of the Settlement  
26 Hearing, or July 19, 2016. All persons who submit valid and timely Requests for Exclusion shall  
27 have no rights under the Stipulation, shall not share in the distribution of the Net Settlement  
28 Fund, and shall not be bound by the Settlement Stipulation or the Judgment. However, a

1 Settlement Class Member may submit a written revocation of a Request for Exclusion up until  
2 five (5) days prior to the date of the Settlement Hearing, or August 11, 2016, and still be eligible  
3 to receive payments pursuant to the Stipulation, provided the Settlement Class Member also  
4 submits a valid Proof of Claim prior to the Settlement Hearing (the “Bar Date”).

5 **Settlement Hearing; Right to Appear and Object**

6 19. The Settlement Hearing shall take place before the undersigned, United States  
7 District Judge Yvonne Gonzalez Rogers, in Courtroom 1, Oakland Courthouse, 1301 Clay Street,  
8 Oakland, California 94612, on August 16, 2016, at 2:00 p.m., to determine:

- 9 a) Whether the Court should certify the Settlement Class and whether the Class  
10 Plaintiff and his counsel have adequately represented the Settlement Class;  
11 b) Whether the Settlement, on the terms and conditions provided for in the  
12 Stipulation, should be finally approved by the Court as fair, reasonable, and  
13 adequate;  
14 c) Whether the Action should be dismissed on the merits and with prejudice as to  
15 the Settling Defendants;  
16 d) Whether the Court should permanently enjoin the assertion of any claims that  
17 arise from or relate to the subject matter of the Action;  
18 e) Whether the application for attorneys’ fees and expenses to be submitted by  
19 Lead Counsel should be approved;  
20 f) Whether the Plan of Allocation is fair and reasonable to the Settlement Class;  
21 g) Whether the application for an incentive award to be submitted by Lead  
22 Plaintiff should be approved; and  
23 h) Such other matters as the Court may deem necessary or appropriate.  
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25 20. The Court may finally approve the Stipulation at or after the Settlement Hearing  
26 with any modifications agreed to by the Settling Parties and without further notice to the  
27 Settlement Class Members.

28 21. Any Settlement Class Member and any other interested person may appear at the

1 Settlement Hearing in person or by counsel and be heard, to the extent allowed by the Court,  
 2 either in support of or in opposition to the matters to be considered at the hearing, provided,  
 3 however, that no person shall be heard, and no papers, briefs, or other submissions shall be  
 4 considered by the Court in connection to such matters, unless such person files with the Court,  
 5 no later than twenty eight (28) days before the Settlement Hearing, or by July 19, 2016, a  
 6 statement of objection setting forth: (i) whether the person is a member of the Settlement Class;  
 7 (ii) to which part of the Stipulation the Member of the Settlement Class objects; (iii) the specific  
 8 reason(s), if any, for such objection including any legal support the member of the Settlement  
 9 Class wishes to bring to the Court's attention and any evidence the member wishes to introduce  
 10 in support of such objection. Such member of the Settlement Class shall also provide  
 11 documentation sufficient to establish the amount of Polycom securities purchased and sold  
 12 during the Settlement Class Period or by other means involving transactions in the United States,  
 13 and the prices and dates of such transactions. Objection materials must be sent to the following:  
 14

15 for Lead Counsel:

16 Jeremy A. Lieberman  
 17 Pomerantz LLP  
 18 600 Third Avenue  
 New York, NY 10016

for Defendants' Counsel:

Keith E. Eggleton  
 Wilson Sonsini Goodrich & Rosati  
 650 Page Mill Rd.  
 Palo Alto, CA 94304-1040

19 Court:

20 Clerk of the Court  
 21 United States District Court  
 Northern District of California  
 22 Oakland Courthouse  
 1301 Clay Street  
 23 Oakland, California 94612

Paul T. Friedman  
 Morrison & Foerster LLP  
 425 Market Street  
 San Francisco, CA 94105-2482

24 22. Lead Counsel shall file all papers, including memoranda or briefs in support of  
 25 the Stipulation, no later than forty-two (42) days prior to the Settlement Hearing, or by July 5,  
 26 2016.

27 23. Lead Counsel shall file any motion for an award of attorneys' fees and  
 28 reimbursement of expenses no later than forty-two (42) days prior to the Settlement Hearing, or



1 by July 5, 2016.

2 24. The Court may adjourn the Settlement Hearing, including the consideration of the  
3 motion for attorneys' fees and expenses, without further notice of any kind other than an  
4 announcement of such adjournment in open court at the Settlement Hearing or any adjournment  
5 thereof.

6 25. If the Settlement is approved, all Settlement Class Members will be bound by the  
7 terms of the Settlement as set forth in the Stipulation, and by any judgment or determination of  
8 the Court affecting the Settlement Class, regardless of whether or not a Settlement Class Member  
9 submits a Proof of Claim. Any member of the Settlement Class who fails to opt out of the  
10 Settlement Class or who fails to object in the manner prescribed therein shall be deemed to have  
11 waived, and shall be foreclosed forever from raising objections or asserting any claims arising  
12 out of, related to, or based in whole or in part on any of the facts or matters alleged, or which  
13 could have been alleged, or which otherwise were at issue in the Action.  
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15 **Other Provisions**

16 26. Upon payment of the Settlement Consideration to the Escrow Account by AIG on  
17 behalf of Defendants, the Settlement Fund shall be deemed to be in the custody of the Court and  
18 shall remain subject to the jurisdiction of the Court until such time as the Settlement Fund is  
19 distributed or returned to the Defendants pursuant to the Stipulation and/or further order of this  
20 Court. There shall be no distribution of any part of the Net Settlement Fund to the Settlement  
21 Class until the Plan of Allocation is finally approved and the Court issues the Settlement Fund  
22 Distribution Order.

23 27. Except for the obligation to cooperate in the production of reasonably available  
24 information with respect to the identification of members of the Settlement Class from  
25 Polycom's shareholder transfer records, in no event shall the Settling Defendants or any of the  
26 Released Parties have any responsibility for the administration of the Settlement, and neither the  
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1 Settling Defendants nor any of the Released Parties shall have any obligation or liability to the  
2 Lead Plaintiff, Lead Counsel, or the Settlement Class in connection with such administration.

3 28. No Person shall have any claim against Lead Plaintiff, Lead Counsel, the  
4 Settlement Class Members, the Settlement Administrator, the Escrow Agent or any other agent  
5 designated by Lead Counsel based on distribution determinations or claim rejections made  
6 substantially in accordance with this Stipulation and the Settlement, the Plan of Allocation, or  
7 further orders of the Court, except in the case of fraud or willful misconduct. No person shall  
8 have any claim under any circumstances against the Released Parties, based on any distributions,  
9 determinations, claim rejections or the design, terms, or implementation of the Plan of  
10 Allocation.

11 29. The Settling Defendants have denied, and continue to deny, any and all  
12 allegations and claims asserted in the Action, and the Settling Defendants have represented that  
13 they entered into the Settlement solely in order to eliminate the burden, expense, and  
14 uncertainties of further litigation. This Order and the Stipulation, whether the Settlement  
15 contemplated by the Stipulation is consummated or not, and any statements made or proceedings  
16 taken pursuant to them are not, shall not be deemed to be, and may not be argued to be or offered  
17 or received:  
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19 i) Against any of the Released Parties as evidence of, or construed as evidence  
20 of any presumption, concession, or admission by any of the Released Parties  
21 with respect to the truth of any fact alleged by the Lead Plaintiff in this Action  
22 or the validity of any claim that has been or could have been asserted against  
23 any of the Released Parties in this Action or in any litigation, or the deficiency  
24 of any defense that has been or could have been asserted in this Action or in  
25 any litigation, or of any liability, negligence, fault, or other wrongdoing of any  
26 kind by any of the Released Parties.

27 j) Against any of the Released Parties as evidence of, or construed as evidence  
28 of any presumption, concession, or admission of any fault, misrepresentation,

1 or omission with respect to any statement or written document approved or  
2 made by any of the Released Parties, or against the Lead Plaintiff or any  
3 Settlement Class Member as evidence of, or construed as evidence of any  
4 infirmity of the claims alleged by the Lead Plaintiff.

5 k) Against any of the Released Parties, the Lead Plaintiff, or any Settlement  
6 Class Member as evidence of, or construed as evidence of any presumption,  
7 concession, or admission by any of the Released Parties, the Lead Plaintiff, or  
8 any Settlement Class Member with respect to any liability, negligence, fault,  
9 or wrongdoing as against any of the Released Parties, the Lead Plaintiff, or  
10 any Settlement Class Member in any other civil, criminal, or administrative  
11 action or proceeding, other than such proceedings as may be necessary to  
12 effectuate the provisions of the Stipulation, provided, however, that, the  
13 Released Parties, the Lead Plaintiff, and any Settlement Class Member may  
14 use it to effectuate the liability protection granted them by the Stipulation;

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16 l) Against any of the Released Parties as evidence of, or construed as evidence  
17 of any presumption, concession, or admission by any of the Released Parties  
18 that the Settlement Consideration represents the amount which could or would  
19 have been received after trial;

20 m) Against Lead Plaintiff or any Settlement Class Member as evidence of, or  
21 construed as evidence of any presumption, concession, or admission by any of  
22 the Lead Plaintiff or any Settlement Class Member that any of their claims are  
23 without merit, or that any defenses asserted by Settling Defendants or any  
24 former defendants in this Action have any merit, or that damages recoverable  
25 in this Action would not have exceeded the Settlement Fund; and

26 n) As evidence of, or construed as evidence of any presumption, concession, or  
27 admission that class certification is appropriate in this Action, except for  
28 purposes of this Settlement.

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30. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation, this Order shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated, and in such event, all orders entered and releases delivered in connection therewith shall be null and void to the extent provided by and in accordance with the Settlement, and without prejudice to the rights of the parties to the Stipulation before it was executed.

**SO ORDERED** in the Northern District of California on February 29, 2016.

  
THE HON. YVONNE GONZALEZ ROGERS  
UNITED STATES DISTRICT JUDGE