

1 JINA L. CHOI (N.Y. Bar No. 2699718)  
SUSAN F. LaMARCA (Cal. Bar No. 213251)  
2 lamarcas@sec.gov  
DAVID S. JOHNSON (D.C. Bar No. 477298)  
3 johnsonds@sec.gov

4 Attorneys for Plaintiff  
SECURITIES AND EXCHANGE COMMISSION  
5 44 Montgomery Street, Suite 2800  
San Francisco, CA 94104  
6 (415) 705-2500 (telephone)  
(415) 705-2501 (fax)  
7

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 OAKLAND DIVISION  
11

12 SECURITIES AND EXCHANGE COMMISSION,

13 Plaintiff,

14 v.

15 ANDREW M. MILLER,

16 Defendant.  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

CIVIL CASE No. 3:15-cv-01461-YGR (LB)

[PROPOSED] FINAL JUDGMENT  
BY CONSENT

1 The Securities and Exchange Commission having filed a Complaint and Defendant Andrew  
2 M. Miller having entered a general appearance; consented to the Court's jurisdiction over Defendant  
3 and the subject matter of this action; consented to entry of this Final Judgment, without admitting or  
4 denying the allegations of the Complaint (except as to jurisdiction and except as otherwise provided  
5 herein in paragraph XIII.); waived findings of fact and conclusions of law; and waived any right to  
6 appeal from this Final Judgment:

7 I.

8 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is permanently  
9 restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities  
10 Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder,  
11 17 C.F.R. § 240.10b-5, by using any means or instrumentality of interstate commerce, or of the mails,  
12 or of any facility of any national securities exchange, in connection with the purchase or sale of any  
13 security:

- 14 (a) to employ any device, scheme, or artifice to defraud;
- 15 (b) to make any untrue statement of a material fact or to omit to state a material fact  
16 necessary in order to make the statements made, in the light of the circumstances  
17 under which they were made, not misleading; or
- 18 (c) to engage in any act, practice, or course of business which operates or would  
19 operate as a fraud or deceit upon any person.

20 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal  
21 Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive  
22 actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers,  
23 agents, servants, employees, and attorneys; and (b) other persons in active concert or participation  
24 with Defendant or with anyone described in clause (a) of this sentence.

25 II.

26 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is  
27 permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the  
28 "Securities Act"), 15 U.S.C. § 77q(a), in the offer or sale of any security by the use of any means or

1 instruments of transportation or communication in interstate commerce or by use of the mails,  
2 directly or indirectly:

- 3 (a) to employ any device, scheme, or artifice to defraud;
- 4 (b) to obtain money or property by means of any untrue statement of a material fact or any  
5 omission of a material fact necessary in order to make the statements made, in light of  
6 the circumstances under which they were made, not misleading; or
- 7 (c) to engage in any transaction, practice, or course of business which operates or would  
8 operate as a fraud or deceit upon the purchaser.

9 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal  
10 Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive  
11 actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers,  
12 agents, servants, employees, and attorneys; and (b) other persons in active concert or participation  
13 with Defendant or with anyone described in clause (a) of this sentence.

14 III.

15 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is  
16 permanently restrained and enjoined from violating Section 14(a) of the Exchange Act, 15 U.S.C. §  
17 78n(a), and Rules 14a-3 and 14a-9 thereunder, 17 C.F.R. §§ 240.14a-3 & 240.14a-9, directly or  
18 indirectly, by use of the mails or the means or instrumentalities of interstate commerce or of any  
19 facility of a national securities exchange or otherwise, from soliciting or permitting the use of his  
20 name to solicit, any proxy or consent or authorization with respect to any security other than an  
21 exempted security registered pursuant to Exchange Act Section 12, including by soliciting proxies  
22 without required information or by use of proxy statements that contain any false or misleading  
23 statement as to any material fact, or that omit any material fact necessary to make the statements  
24 made not false or misleading.

25 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal  
26 Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive  
27 actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers,  
28

1 agents, servants, employees, and attorneys; and (b) other persons in active concert or participation  
2 with Defendant or with anyone described in clause (a) of this sentence.

3 IV.

4 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is  
5 permanently restrained and enjoined from aiding and abetting any violation of Section 13(b)(2)(A) of  
6 the Exchange Act, 15 U.S.C. § 78m(b)(2)(A), by knowingly or recklessly providing substantial  
7 assistance to an issuer that fails to make and keep books, records, and accounts which, in reasonable  
8 detail, accurately and fairly reflect the transactions and dispositions of the issuer's assets.

9 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal  
10 Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive  
11 actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers,  
12 agents, servants, employees, and attorneys; and (b) other persons in active concert or participation  
13 with Defendant or with anyone described in clause (a) of this sentence.

14 V.

15 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is  
16 permanently restrained and enjoined from violating Section 13(b)(5) of the Exchange Act, 15 U.S.C.  
17 § 78m(b)(5), by knowingly circumventing a system of internal accounting controls, or knowingly  
18 falsifying any book, record or account required to be made and kept by Section 12(b)(2) of the  
19 Exchange Act, 15 U.S.C. § 78m(b)(2).

20 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal  
21 Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive  
22 actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers,  
23 agents, servants, employees, and attorneys; and (b) other persons in active concert or participation  
24 with Defendant or with anyone described in clause (a) of this sentence.

25 VI.

26 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is  
27 permanently restrained and enjoined from aiding and abetting any violation of Section 13(a) of the  
28 Exchange Act, 15 U.S.C. § 78m(a) and Rules 12b-20 and 13a-1 thereunder, 17 C.F.R. §§ 240.12b-20

1 & 240.13a-1, by knowingly or recklessly providing substantial assistance to an issuer that files with  
2 the Commission annual reports that contain misleading information, or that fail to include material  
3 information necessary to make the required statements not misleading.

4 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal  
5 Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive  
6 actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers,  
7 agents, servants, employees, and attorneys; and (b) other persons in active concert or participation  
8 with Defendant or with anyone described in clause (a) of this sentence.

9 VII.

10 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is  
11 permanently restrained and enjoined from violating Exchange Act Rule 13a-14, 17 C.F.R. § 240.13a-  
12 14, by signing certifications required to be made and included in an issuer's annual or quarterly  
13 report, pursuant to Rule 13a-14 of the Exchange Act, that are false or misleading when made.

14 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal  
15 Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive  
16 actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers,  
17 agents, servants, employees, and attorneys; and (b) other persons in active concert or participation  
18 with Defendant or with anyone described in clause (a) of this sentence.

19 VIII.

20 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section  
21 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2), and Section 20(e) of the Securities Act, 15  
22 U.S.C. § 77t(e), Defendant is prohibited for five years following the date of entry of this Final  
23 Judgment, from acting as an officer or director of any issuer that has a class of securities registered  
24 pursuant to Section 12 of the Exchange Act, 15 U.S.C. § 78l, or that is required to file reports  
25 pursuant to Section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d).

26 IX.

27 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable to pay  
28 disgorgement of \$190,000, together with prejudgment interest thereon in the amount of \$10,000.

1 Defendant shall satisfy this obligation by paying \$200,000 within 120 days after entry of this Final  
2 Judgment. Defendant may send his payment either to Polycom, Inc., provided that proof of such  
3 payment is made within 120 days after entry of this Final Judgment in the form of photocopies of  
4 evidence of payment and case identifying information delivered to the Commission's counsel in this  
5 action, addressed to: Susan F. LaMarca, Securities and Exchange Commission, 44 Montgomery  
6 Street, Suite 2800, San Francisco, CA 94104; alternatively, defendant may make his payment of  
7 disgorgement with prejudgment interest within 120 days after entry of this Final Judgment directly to  
8 the Securities and Exchange Commission, as provided in paragraph XI, below.

9 X.

10 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall pay a  
11 civil penalty in the amount of \$250,000 to the Securities and Exchange Commission pursuant to  
12 Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d) of the Exchange Act, 15  
13 U.S.C. § 78u(d). Defendant shall make this payment within 14 days after entry of this Final  
14 Judgment.

15 XI.

16 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, in making the payments  
17 to the Securities and Exchange Commission pursuant to either paragraph IX or paragraph X of this  
18 Final Judgment, Defendant may transmit payment electronically to the Commission, which will  
19 provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made  
20 directly from a bank account via Pay.gov through the SEC website at  
21 <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified check, bank  
22 cashier's check, or United States postal money order payable to the Securities and Exchange  
23 Commission, which shall be delivered or mailed to

24 Enterprise Services Center  
25 Accounts Receivable Branch  
26 6500 South MacArthur Boulevard  
27 Oklahoma City, OK 73169  
28

1 and shall be accompanied by a letter identifying the case title, civil action number, and name of this  
2 Court; Andrew M. Miller as a defendant in this action; and specifying that payment is made pursuant  
3 to this Final Judgment.

4 Defendant shall simultaneously transmit photocopies of evidence of payment and case  
5 identifying information to the Commission's counsel in this action, addressed to: Susan F. LaMarca,  
6 Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, CA 94104.  
7 By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in  
8 such funds and no part of the funds shall be returned to Defendant. The Commission shall send the  
9 funds paid pursuant to this Final Judgment to the United States Treasury.

10 The Commission may enforce the Court's judgment for disgorgement and prejudgment  
11 interest by moving for civil contempt (and/or through other collection procedures authorized by law)  
12 at any time after 120 days following entry of this Final Judgment. Defendant shall pay post judgment  
13 interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

14 XII.

15 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is  
16 incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall  
17 comply with all of the undertakings and agreements set forth therein.

18 XIII.

19 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, solely for purposes of  
20 exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the  
21 allegations in the complaint are true and admitted by Defendant, and further, any debt for  
22 disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under this Final  
23 Judgment or any other judgment, order, consent order, decree or settlement agreement entered in  
24 connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws  
25 or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the  
26 Bankruptcy Code, 11 U.S.C. §523(a)(19).

27

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

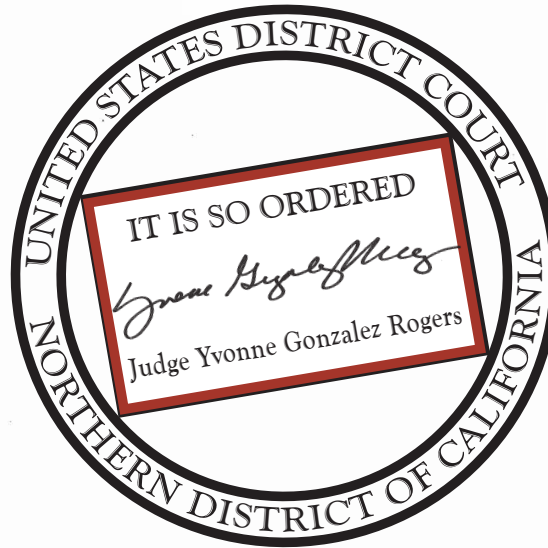
XIV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

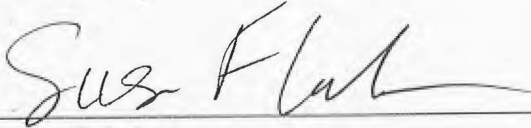
IT IS SO ORDERED.

Dated: January 26, 2016

*Yvonne Gonzalez Rogers*  
Yvonne Gonzalez Rogers  
UNITED STATES DISTRICT JUDGE

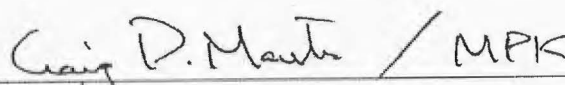


1 Submitted by:

2   
3 \_\_\_\_\_

4 Susan F. LaMarca  
5 David S. Johnson  
6 Attorneys for Plaintiff  
7 SECURITIES AND EXCHANGE COMMISSION  
8 44 Montgomery Street, Suite 2800  
9 San Francisco, CA 94104

10 Approved as to form by:

11   
12 \_\_\_\_\_

13 Craig D. Martin  
14 MORRISON & FOERSTER LLP  
15 425 Market Street  
16 San Francisco, CA 94105-2482  
17 Attorneys for Defendant  
18 Andrew M. Miller  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28