

15

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

FILED BY FAX

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CV 13 3476

██████████ Individually and
On Behalf of All Others Similarly
Situating,

Plaintiff,

v.

POLYCOM, INC., ANDREW M. MILLER,
ERIC F. BROWN, and SAYED DARWISH

Defendants.

No.

CLASS ACTION

COMPLAINT FOR VIOLATION
OF THE FEDERAL
SECURITIES LAWS

DEMAND FOR JURY TRIAL

1 Plaintiff [REDACTED] ("Plaintiff"), individually and on behalf of all other persons
2 similarly situated, by his undersigned attorneys, for his complaint against defendants, alleges
3 the following based upon personal knowledge as to himself and his own acts, and information
4 and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and
5 through his attorneys, which included, among other things, a review of the defendants' public
6 documents, conference calls and announcements made by defendants, United States Securities
7 and Exchange Commission ("SEC") filings, wire and press releases published by and regarding
8 Polycom Inc. ("Polycom" or the "Company"), analysts' reports and advisories about the
9 Company, and information readily obtainable on the Internet. Plaintiff believes that substantial
10 evidentiary support will exist for the allegations set forth herein after a reasonable opportunity
11 for discovery.
12
13

14 **NATURE OF THE ACTION**

15 1. This is a federal securities class action on behalf of a class consisting of all
16 persons other than defendants who purchased or otherwise acquired Polycom securities
17 between July 24, 2012 and July 23, 2013, both dates inclusive (the "Class Period"), seeking to
18 recover damages caused by defendants' violations of the federal securities laws and to pursue
19 remedies under §§ 10(b), 14(a) and 20(a) of the Securities Exchange Act of 1934 (the
20 "Exchange Act") and Rules 10b-5 and 14a-9 promulgated thereunder against the Company and
21 certain of its top officials and/or directors.
22
23

24 2. Polycom provides standards-based unified communications and collaboration
25 (UC&C) solutions for voice and video collaboration. The Company offers video, voice, and
26 content-management and content-sharing solutions, such as telepresence and conference room
27 systems, home/work office solutions, applications for mobile devices, browser-based video
28

1 collaboration, cloud-delivered services, and specialized healthcare video carts.

2 3. Unbeknownst to investors, throughout the Class Period, the Company's CEO,
3 Andrew Miller, submitted irregular and suspect expense submissions. The Company, however,
4 failed to detect this behavior, or chose to overlook the evidence of such behavior, thereby
5 placing at risk the Company's assets, and demonstrating a weakness in the Company's internal
6 controls, and audit and financial reporting structures.

7 4. Mr. Miller's illicit behavior was in direct breach of his ethical and legal duties as
8 an officer of the Company. Indeed, incorporated by reference in the Company's 2012 annual
9 report and proxy materials is a Code of Business Ethics and Conduct (the, "Code"), which
10 explicitly prohibits the behavior engaged in by Mr. Miller. The Code provides:
11

12
13 Protecting Polycom's assets is a key responsibility of every employee, agent and
14 contractor. Care should be taken to ensure that assets are not misappropriated,
15 loaned to others, or sold or donated without appropriate authorization. All
16 Polycom employees, agents and contractors are responsible for the proper use of
17 Polycom assets, and must safeguard such assets against loss, damage, misuse or
18 theft. Employees, agents or contractors who violate any aspect of this policy or
19 who demonstrate poor judgment in the manner in which they use any Polycom
20 asset will be subject to disciplinary action, up to and including termination of
21 employment or business relationship at Polycom's sole discretion.

22 * * *

23 *Polycom funds must be used only for Polycom business purposes. Every Polycom
24 employee, agent and contractor must take reasonable steps to ensure that
25 Polycom receives good value for Polycom funds spent, and must maintain
26 accurate and timely records of each and every expenditure. Expense reports must
27 be accurate and submitted in a timely manner. Polycom employees, agents and
28 contractors must not use Polycom funds for any personal purpose.*

[Emphasis added.]

5. Throughout the Class Period, Defendants made materially false and misleading
statements regarding the Company's business, operational and compliance policies.
Specifically, Defendants made false and/or misleading statements and/or failed to disclose that:

1 (i) The Company's CEO had been submitting inappropriate and irregular expense submissions,
2 (ii) the Company's CEO was violating the Company's code of conduct and was subject to
3 dismissal at all relevant times; (iii) the Company did not have effective internal controls over
4 their business operations thus materially impacting the Company's current and previous
5 financial statements, (iv) the CEO's improper conduct created a risk that he would be
6 terminated from the Company, jeopardizing the Company's future success, (v) as a result of the
7 above, the Company's financial statements were materially false and misleading at all relevant
8 times.
9

10 6. On July 23, 2013, Polycom announced that its CEO Andrew Miller had resigned
11 after the board found "irregularities" in his expense submissions. The Company stated that Mr.
12 Miller accepted responsibility for his actions.
13

14 7. On this news, the shares of Polycom shares fell \$1.69 cents, or over 15%
15 percent, to \$9.49 per share on July 24, 2013, on volume of over 14 million shares. This fall
16 wiped out over \$275 million in market value.
17

18 8. As a result of defendants' wrongful acts and omissions, and the precipitous
19 decline in the market value of the Company's securities, Plaintiff and other Class members
20 have suffered significant losses and damages.
21

22 JURISDICTION AND VENUE

23 9. The claims asserted herein arise under and pursuant to Sections 10(b), 14(a) and
24 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b), 78n(a) and 78t(a)) and Rule 10b-5 and 14a-9
25 promulgated thereunder (17 C.F.R. § 240.10b-5, 17 C.F.R. § 240.14a-9).
26

27 10. This Court has jurisdiction over the subject matter of this action pursuant to § 27
28 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331.

1 11. Venue is proper in this District pursuant to §27 of the Exchange Act, 15 U.S.C.
2 §78aa and 28 U.S.C. §1391(b), as Polycom's principal place of business is located within this
3 District.

4 12. In connection with the acts, conduct and other wrongs alleged in this Complaint,
5 defendants, directly or indirectly, used the means and instrumentalities of interstate commerce,
6 including but not limited to, the United States mail, interstate telephone communications and
7 the facilities of the national securities exchange.
8

9 **PARTIES**

10 13. Plaintiff, as set forth in the attached Certification, acquired Polycom securities at
11 artificially inflated prices during the Class Period and has been damaged thereby.
12

13 14. Defendant Polycom is a Delaware corporation with its principal executive
14 offices located at 6001 America Center Drive, San Jose, California. Polycom common stock
15 trades on the NASDAQ under the ticker symbol "PLCM."
16

17 15. Defendant Andrew M. Miller ("Miller") was the Company's Chief Executive
18 Officer ("CEO") and President between May, 2010 and July 2013, at which point he resigned
19 his position.

20 16. Defendant Eric F. Brown ("Brown") was at all relevant times the Company's
21 Chief Financial Officer, Chief Operating Officer, and Executive Vice President.
22

23 17. Defendant Sayed Darwish ("Darwish") was at all relevant times the Company's
24 Chief Legal Officer and Secretary, responsible for all legal, corporate governance, equity
25 program administration and global citizenship.

26 18. The Defendants referenced above in ¶¶ 15 and 17 are sometimes referred to
27 herein as the "Individual Defendants."
28

SUBSTANTIVE ALLEGATIONS**Background**

1
2
3 19. Polycom, Inc. provides standards-based unified communications and
4 collaboration (UC&C) solutions for voice and video collaboration. The Company offers video,
5 voice, and content-management and content-sharing solutions, such as telepresence and
6 conference room systems, home/work office solutions, applications for mobile devices,
7 browser-based video collaboration, cloud-delivered services, and specialized healthcare video
8 carts. Its RealPresence platform includes universal collaboration servers, virtualization
9 management, resource management, recording and streaming, open application programming
10 interfaces (API), and remote access technologies. The Company also provides UC Group
11 Systems, which include telepresence and video conferencing systems to incorporate high-
12 definition (HD) data sharing and collaboration into a video conference; peripherals and
13 accessories; UC group devices primarily for the Microsoft Lync environment; and conference
14 phones to conduct voice conference calls. In addition, it offers UC personal devices comprising
15 desktop video devices, desktop voice products, and related service elements that provide HD
16 voice, video, and content to desktops, home offices, mobile users, and branch sites.
17
18
19

**Materially False and Misleading
Statements Issued During the Class Period**

20
21 20. On July 24, 2012, the Company issued a press release reporting financial results
22 for the second quarter ended June 30, 2012. Second quarter 2012 consolidated net revenues
23 from continuing operations were \$359 million, up 5 percent year-over-year as compared
24 to \$341 million for the second quarter of 2011. Non-GAAP net income for the second quarter
25 of 2012 was \$39 million, or 22 cents per diluted share, compared to non-GAAP net income
26 of \$43 million, or 24 cents per diluted share, for the second quarter of 2011. GAAP net income
27
28

1 for the second quarter of 2012 was \$7 million, or 4 cents per diluted share, compared to \$29
2 million, or 16 cents per diluted share, for the same period last year.

3 21. On July 31, 2012, the Company filed its second quarter 2012 financial results
4 with the SEC on Form 10-Q, reiterating the results discussed above. In addition, the Form 10-Q
5 contained signed certifications pursuant to the Sarbanes-Oxley Act of 2002 ("SOX") by
6 Defendants Miller and Brown, stating that the financial information contained in the Form 10-
7 Q was accurate and disclosed any material changes to the Company's internal control over
8 financial reporting.
9

10 22. On October 23, 2012, the Company issued a press release reporting financial
11 results for the third quarter ended September 30, 2012. Third quarter 2012 consolidated net
12 revenues from continuing operations were \$335 million, down 6 percent year-over-year as
13 expected compared to \$355 million for the third quarter of 2011. Non-GAAP net income for
14 the third quarter of 2012 was \$17 million, or 10 cents per diluted share, compared to non-
15 GAAP net income of \$42 million, or 23 cents per diluted share, for the third quarter of 2011.
16 GAAP earnings from continuing operations for the third quarter of 2012 was a net loss of \$15
17 million, or 8 cents per diluted share, compared to net income of \$20 million, or 11 cents per
18 diluted share, for the same period last year.
19
20

21 23. On October 31, 2012 the Company filed its third quarter 2012 financial results
22 with the SEC on Form 10-Q, reiterating the results discussed above. In addition, the Form 10-Q
23 contained signed certifications pursuant to the Sarbanes-Oxley Act of 2002 ("SOX") by
24 Defendants Miller and Brown, stating that the financial information contained in the Form 10-
25 Q was accurate and disclosed any material changes to the Company's internal control over
26 financial reporting.
27
28

1 24. On January 23, 2013 the Company issued a press release reporting financial
2 results for the third quarter ended December 31, 2012. Fourth quarter 2012 consolidated net
3 revenues were \$353 million, up 5 percent sequentially, growing in all product categories,
4 compared to \$335 million for the third quarter of 2012 and down 9 percent year-over-year
5 compared to \$386 million for the fourth quarter of 2011. Non-GAAP net income for the fourth
6 quarter of 2012 was \$31 million, or 17 cents per diluted share, compared to non-GAAP net
7 income of \$17 million or 10 cents per diluted share for the third quarter of 2012, and non-
8 GAAP net income of \$68 million, or 38 cents per diluted share for the fourth quarter of 2011.
9 GAAP net income for the fourth quarter of 2012 was \$2 million, or 1 cent per diluted share,
10 compared to GAAP net income of \$50 million, or 28 cents per diluted share, for the same
11 period last year.
12

13
14 25. On February 14, 2013 the Company filed an annual report for the period ended
15 December 31, 2012 on a Form 10-K with the SEC, which was signed by among others,
16 Defendants Miller and Brown, reiterating the Company's previously announced financial
17 results and financial position. In addition, the Form 10-K contained signed certifications
18 pursuant to the SOX by Defendants Miller and Brown, stating that the financial information
19 contained in the Form 10-K was accurate and disclosed any material changes to the Company's
20 internal control over financial reporting. Defendants Miller and Brown also both signed and
21 approved the internal control report which is based on all of the financial statements for the
22 year ending December 31, 2012. The Report read the following:
23

24
25 Management of our Company is responsible for establishing and maintaining
26 adequate internal control over financial reporting as defined in Rules 13a-15(f)
27 and 15(d)-15(f) under the Securities Exchange Act of 1934. Our internal control
28 over financial reporting is designed to provide reasonable assurance regarding the
reliability of financial reporting and the preparation of financial statements for
external purposes in accordance with generally accepted accounting principles.

1 Internal control over financial reporting includes those policies and procedures
2 that:

- 3 • *pertain to the maintenance of records that, in reasonable*
4 *detail, accurately and fairly reflect the transactions and*
5 *dispositions of the assets of our Company;*
- 6 • *provide reasonable assurance that transactions are recorded*
7 *as necessary to permit preparation of financial statements in*
8 *accordance with generally accepted accounting principles, and*
9 *that receipts and expenditures of the Company are being made*
10 *only in accordance with authorizations of management and*
11 *directors of our Company; and*
- 12 • *provide reasonable assurance regarding prevention or timely*
13 *detection of unauthorized acquisition, use or disposition of our*
14 *Company's assets that could have a material effect on the*
15 *financial statements.*

16 Because of its inherent limitations, internal control over financial reporting may
17 not prevent or detect misstatements. Also, projections of any evaluation of
18 effectiveness to future periods are subject to the risk that controls may become
19 inadequate because of changes in conditions and that the degree of compliance
20 with the policies or procedures may deteriorate.

21 We conducted an evaluation of the effectiveness of our internal control over
22 financial reporting based on the framework in Internal Control—Integrated
23 Framework issued by the Committee of Sponsoring Organizations of the
24 Treadway Commission. Based on the results of this evaluation, management has
25 concluded that, as of December 31, 2012 our internal control over financial
26 reporting was effective to provide reasonable assurance regarding the reliability of
27 financial reporting and the preparation of financial statements for external
28 purposes in accordance with generally accepted accounting principles.

(Emphasis added.)

26. Also included by reference in the 2012 annual report was the Company's code
of conduct. The Code explicitly stated that:

Protecting Polycom's assets is a key responsibility of every employee, agent and
contractor. Care should be taken to ensure that assets are not misappropriated,
loaned to others, or sold or donated without appropriate authorization. All
Polycom employees, agents and contractors are responsible for the proper use of
Polycom assets, and must safeguard such assets against loss, damage, misuse or
theft. Employees, agents or contractors who violate any aspect of this policy or

1 who demonstrate poor judgment in the manner in which they use any Polycom
2 asset will be subject to disciplinary action, up to and including termination of
3 employment or business relationship at Polycom's sole discretion.

4 * * *

5 *Polycom funds must be used only for Polycom business purposes. Every Polycom*
6 *employee, agent and contractor must take reasonable steps to ensure that*
7 *Polycom receives good value for Polycom funds spent, and must maintain*
8 *accurate and timely records of each and every expenditure. Expense reports must*
9 *be accurate and submitted in a timely manner. Polycom employees, agents and*
10 *contractors must not use Polycom funds for any personal purpose.*

11 [Emphasis added.]

12 27. On April 19, 2013, the Company's Board of Directors filed with the SEC a
13 proxy statement (the, "Proxy Statement") on Form 14A. The Proxy Statement reported to
14 investors the Company's corporate governance and ethical standards as following:

15 Polycom believes that strong corporate governance practices are the foundation of
16 a successful, well-run company. Polycom is committed to establishing an
17 operating framework that exercises appropriate oversight of responsibilities at all
18 levels throughout Polycom and managing its affairs consistent with high
19 principles of business ethics. The Board has adopted Corporate Governance
20 Principles that set forth our principal corporate governance policies, including the
21 oversight role of the Board. The Board first adopted these Corporate Governance
22 Principles in 2003 and reviews them regularly, refining them from time to time.

23 In addition, Polycom has adopted a Code of Business Ethics and Conduct, which
24 is applicable to our directors and employees, including our principal executive
25 officer, principal financial officer, principal accounting officer or controller or
26 persons performing similar functions. The Corporate Governance Principles and
27 the Code of Business Ethics and Conduct are available on Polycom's website,
28 www.polycom.com, under the tabs "Company " and "Investor Relations —
Corporate Governance ."

29 28. The Proxy Statement also explicitly reports Defendant Miller's compensation as
30 a base salary of \$750,000, with a bonus and incentives tied to the Company's performance. The
31 Proxy statement reports that Defendant Miller's compensation is lower than peer companies'
32 compensation for their respective Chief Executive Officers.

1 irregularities in these submissions. At the conclusion of the review, Mr. Miller
2 accepted responsibility and submitted the letter referred to in Item 5.02. The
3 amounts involved did not have a material impact on the Company's previously
4 reported financial statements for any period.

5 32. On this news, shares of Polycom fell \$1.68 cents, or over 15% percent, to \$9.50
6 per share on July 24, 2013, on volume of over 11 million shares. This fall wiped out over \$275
7 million in market value.

8 33. As a result of defendants' wrongful acts and omissions, and the precipitous
9 decline in the market value of the Company's securities, Plaintiff and other Class members
10 have suffered significant losses and damages

11 **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

12 34. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil
13 Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or
14 otherwise acquired Polycom securities during the Class Period (the "Class"); and were
15 damaged thereby. Excluded from the Class are defendants herein, the officers and directors of
16 the Company, at all relevant times, members of their immediate families and their legal
17 representatives, heirs, successors or assigns and any entity in which defendants have or had a
18 controlling interest.

19 35. The members of the Class are so numerous that joinder of all members is
20 impracticable. Throughout the Class Period, Polycom securities were actively traded on the
21 NASDAQ. While the exact number of Class members is unknown to Plaintiff at this time and
22 can be ascertained only through appropriate discovery, Plaintiff believes that there are hundreds
23 or thousands of members in the proposed Class. Record owners and other members of the
24 Class may be identified from records maintained by Polycom or its transfer agent and may be
25
26
27
28

1 notified of the pendency of this action by mail, using the form of notice similar to that
2 customarily used in securities class actions.

3 36. Plaintiff's claims are typical of the claims of the members of the Class as all
4 members of the Class are similarly affected by defendants' wrongful conduct in violation of
5 federal law that is complained of herein.

6
7 37. Plaintiff will fairly and adequately protect the interests of the members of the
8 Class and has retained counsel competent and experienced in class and securities litigation.
9 Plaintiff has no interests antagonistic to or in conflict with those of the Class.

10 38. Common questions of law and fact exist as to all members of the Class and
11 predominate over any questions solely affecting individual members of the Class. Among the
12 questions of law and fact common to the Class are:

- 14 • whether the federal securities laws were violated by defendants' acts as alleged
15 herein;
- 16 • whether statements made by defendants to the investing public during the Class
17 Period misrepresented material facts about the business, operations and management
18 of Polycom;
- 19 • whether the Individual Defendants caused Polycom to issue false and misleading
20 financial statements during the Class Period;
- 21 • whether defendants acted knowingly or recklessly in issuing false and misleading
22 financial statements;
- 23 • whether the prices of Polycom securities during the Class Period were artificially
24 inflated because of the defendants' conduct complained of herein; and
- 25 • whether the members of the Class have sustained damages and, if so, what is the
26 proper measure of damages.

27 39. A class action is superior to all other available methods for the fair and efficient
28 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as
the damages suffered by individual Class members may be relatively small, the expense and

1 burden of individual litigation make it impossible for members of the Class to individually
2 redress the wrongs done to them. There will be no difficulty in the management of this action
3 as a class action.

4 40. Plaintiff will rely, in part, upon the presumption of reliance established by the
5 fraud-on-the-market doctrine in that:

- 6 • defendants made public misrepresentations or failed to disclose material facts during
7 the Class Period;
- 8 • the omissions and misrepresentations were material;
- 9 • Polycom securities are traded in an efficient market;
- 10 • the Company's shares were liquid and traded with moderate to heavy volume during
11 the Class Period;
- 12 • the Company traded on the NASDAQ and was covered by multiple analysts;
- 13 • the misrepresentations and omissions alleged would tend to induce a reasonable
14 investor to misjudge the value of the Company's securities; and
- 15 • Plaintiff and members of the Class purchased, acquired and/or sold Polycom
16 securities between the time the defendants failed to disclose or misrepresented
17 material facts and the time the true facts were disclosed, without knowledge of the
18 omitted or misrepresented facts.

19 41. Based upon the foregoing, Plaintiff and the members of the Class are entitled to
20 a presumption of reliance upon the integrity of the market.

21 **COUNT I**

22 **(Against All Defendants For Violations of**
23 **Section 10(b) and Rule 10b-5 Promulgated Thereunder)**

24 42. Plaintiff repeats and realleges each and every allegation contained above as if
25 fully set forth herein.

26 43. This Count is asserted against defendants and is based upon Section 10(b) of the
27 Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder by the SEC.
28

1 44. During the Class Period, defendants engaged in a plan, scheme, conspiracy and
2 course of conduct, pursuant to which they knowingly or recklessly engaged in acts,
3 transactions, practices and courses of business which operated as a fraud and deceit upon
4 Plaintiff and the other members of the Class; made various untrue statements of material facts
5 and omitted to state material facts necessary in order to make the statements made, in light of
6 the circumstances under which they were made, not misleading; and employed devices,
7 schemes and artifices to defraud in connection with the purchase and sale of securities. Such
8 scheme was intended to, and, throughout the Class Period, did: (i) deceive the investing public,
9 including Plaintiff and other Class members, as alleged herein; (ii) artificially inflate and
10 maintain the market price of Polycom securities; and (iii) cause Plaintiff and other members of
11 the Class to purchase or otherwise acquire Polycom securities and options at artificially inflated
12 prices. In furtherance of this unlawful scheme, plan and course of conduct, defendants, and
13 each of them, took the actions set forth herein.
14
15

16 45. Pursuant to the above plan, scheme, conspiracy and course of conduct, each of
17 the defendants participated directly or indirectly in the preparation and/or issuance of the
18 quarterly and annual reports, SEC filings, press releases and other statements and documents
19 described above, including statements made to securities analysts and the media that were
20 designed to influence the market for Polycom securities. Such reports, filings, releases and
21 statements were materially false and misleading in that they failed to disclose material adverse
22 information and misrepresented the truth about Polycom's finances and business prospects.
23
24

25 46. By virtue of their positions at Polycom, defendants had actual knowledge of the
26 materially false and misleading statements and material omissions alleged herein and intended
27 thereby to deceive Plaintiff and the other members of the Class, or, in the alternative,
28

1 defendants acted with reckless disregard for the truth in that they failed or refused to ascertain
2 and disclose such facts as would reveal the materially false and misleading nature of the
3 statements made, although such facts were readily available to defendants. Said acts and
4 omissions of defendants were committed willfully or with reckless disregard for the truth. In
5 addition, each defendant knew or recklessly disregarded that material facts were being
6 misrepresented or omitted as described above.
7

8 47. Information showing that defendants acted knowingly or with reckless disregard
9 for the truth is peculiarly within defendants' knowledge and control. As the Chief Executive
10 Officer of Polycom, Defendant Miller had knowledge of the details of Polycom's internal
11 affairs.
12

13 48. Miller is liable both directly and indirectly for the wrongs complained of herein.
14 Because of his position of control and authority, the Miller was able to and did, directly or
15 indirectly, control the content of the statements of Polycom. As an officer and/or director of a
16 publicly-held Company, Miller had a duty to disseminate timely, accurate, and truthful
17 information with respect to Polycom's businesses, operations, future financial condition and
18 future prospects. As a result of the dissemination of the aforementioned false and misleading
19 reports, releases and public statements, the market price of Polycom securities was artificially
20 inflated throughout the Class Period. In ignorance of the adverse facts concerning Polycom's
21 business and financial condition which were concealed by defendants, Plaintiff and the other
22 members of the Class purchased or otherwise acquired Polycom securities at artificially inflated
23 prices and relied upon the price of the securities, the integrity of the market for the securities
24 and/or upon statements disseminated by defendants, and were damaged thereby.
25
26
27
28

1 49. During the Class Period, Polycom securities were traded on an active and
2 efficient market. Plaintiff and the other members of the Class, relying on the materially false
3 and misleading statements described herein, which the defendants made, issued or caused to be
4 disseminated, or relying upon the integrity of the market, purchased or otherwise acquired
5 shares of Polycom securities at prices artificially inflated by defendants' wrongful conduct.
6 Had Plaintiff and the other members of the Class known the truth, they would not have
7 purchased or otherwise acquired said securities, or would not have purchased or otherwise
8 acquired them at the inflated prices that were paid. At the time of the purchases and/or
9 acquisitions by Plaintiff and the Class, the true value of Polycom securities was substantially
10 lower than the prices paid by Plaintiff and the other members of the Class. The market price of
11 Polycom securities declined sharply upon public disclosure of the facts alleged herein to the
12 injury of Plaintiff and Class members.
13

14
15 50. By reason of the conduct alleged herein, defendants knowingly or recklessly,
16 directly or indirectly, have violated Section 10(b) of the Exchange Act and Rule 10b-5
17 promulgated thereunder.
18

19 51. As a direct and proximate result of defendants' wrongful conduct, Plaintiff and
20 the other members of the Class suffered damages in connection with their respective purchases,
21 acquisitions and sales of the Company's securities during the Class Period, upon the disclosure
22 that the Company had been disseminating misrepresented financial statements to the investing
23 public.
24

25 **COUNT II**

26 **(Violations of Section 20(a) of the**
27 **Exchange Act Against the Individual Defendants)**

28 52. Plaintiff repeats and realleges each and every allegation contained in the

1 foregoing paragraphs as if fully set forth herein.

2 53. During the Class Period, the Individual Defendants participated in the operation
3 and management of Polycom, and conducted and participated, directly and indirectly, in the
4 conduct of Polycom's business affairs. Because of his senior position, the Individual
5 Defendants knew the adverse non-public information about Polycom' published
6 representations.
7

8 54. As officers and/or directors of a publicly owned Company, the Individual
9 Defendants had a duty to disseminate accurate and truthful information with respect to
10 Polycom's compliance with its stated Company policies and to correct promptly any public
11 statements issued by Polycom which had become materially false or misleading.
12

13 55. Because of their position of control and authority as senior officers, the
14 Individual Defendants were able to, and did, control the contents of the various reports, press
15 releases and public filings which Polycom disseminated in the marketplace during the Class
16 Period concerning Polycom's future prospects and compliance with its Code of Conduct.
17 Throughout the Class Period, the Individual Defendants exercised this power and authority to
18 cause Polycom to engage in the wrongful acts complained of herein. The Individual Defendants
19 therefore, were a "controlling person" of Polycom within the meaning of Section 20(a) of the
20 Exchange Act. In this capacity, they participated in the unlawful conduct alleged which
21 artificially inflated the market price of Polycom securities.
22

23
24 56. By reason of the above conduct, the Individual Defendants are liable pursuant to
25 Section 20(a) of the Exchange Act for the violations committed by Polycom.
26
27
28

COUNT III

**(Against Miller and Polycom For Violations of Section 14(a) of the Exchange Act
And Rule 14a-9 Promulgated Thereunder)**

1
2
3
4 57. Plaintiff repeats and realleges each and every allegation contained in the
5 foregoing paragraphs as if fully set forth herein.

6 58. During the Class Period, Miller caused Polycom to disseminate the false and
7 misleading Proxy Statement specified above, which failed to disclose material facts regarding
8 Defendant Miller's illicit "self-compensation" and blatant breach of the Company's code of
9 conduct, that would have made the statements in the Proxy Statement, in light of the
10 circumstances under which they were made, not misleading. As set forth above, the Proxy
11 Statement omitted to state material facts necessary to make the statements in the Proxy
12 Statement not misleading, in violation of Regulation 14a-9.

13
14 59. The Proxy Statement were reviewed and/or disseminated by the Company's
15 Board of Directors, including Defendant Miller. The Proxy Statement misrepresented and/or
16 omitted material facts, including material information concerning Defendant Miller's violation
17 of the Company's Code of Conduct. By virtue of his position within the Company, as well as
18 his personal knowledge of his own improper behavior, Miller had a duty to disclose this
19 information in the Proxy Statement.
20
21

22 60. Miller was at least negligent in filing the Proxy Statement with the above-noted
23 materially false and/or misleading statements.

24 61. The omissions and false and misleading statements in the Proxy Statement are
25 material in that a reasonable shareholder would have considered them important in deciding
26 how to vote on the various matters set forth in the Proxy Statement for shareholder action. In
27 addition, a reasonable shareholder would view a full and accurate disclosure as significantly
28

1 altering the "total mix" of information made available in the Proxy Statement. Specifically, that
2 when taking into account Miller's illicit expense reports, his compensation was larger than
3 reported and potentially at the higher end of the range of CEO pay at Polycom's peer
4 companies.

5 62. By reason of the foregoing, Defendant Miller violated section 14(a) of the
6 Exchange Act and SEC Rule 14a-9(a) promulgated thereunder.
7

8 **PRAYER FOR RELIEF**

9 **WHEREFORE**, Plaintiff demands judgment against defendants as follows:

10 A. Determining that the instant action may be maintained as a class action under
11 Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as the Class
12 representative;
13

14 B. Requiring defendants to pay damages sustained by Plaintiff and the Class by
15 reason of the acts and transactions alleged herein;
16

17 C. Awarding Plaintiff and the other members of the Class prejudgment and post-
18 judgment interest, as well as their reasonable attorneys' fees, expert fees and other costs; and

19 D. Awarding such other and further relief as this Court may deem just and proper.
20

21 **DEMAND FOR TRIAL BY JURY**

22 Plaintiff hereby demands a trial by jury.

23 //
24 //
25 //
26 //
27 //
28 //

1 Dated: July 26, 2013

Respectfully submitted,

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