

1
2
3
4
5
6
7 **UNITED STATES DISTRICT COURT**
8 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
9 **SAN FRANCISCO DIVISION**

10 SAISRAVAN BHARADWAJ KARRI,
11 Individually and on Behalf of All Others
12 Similarly Situated,

13 Plaintiff,

14 v.

15 OCLARO, INC., MARISSA PETERSON,
16 EDWARD COLLINS, GREG
17 DOUGHERTY, KENDALL COWAN,
18 DENISE HAYLOR, IAN SMALL, BILL
19 SMITH, and JOEL A. SMITH III,

20 Defendants.

Case No. 3:18-cv-03435-JD

**ORDER RE PRELIMINARY
APPROVAL**

21 The Court denied the parties' initial request for preliminary approval of a settlement in this
22 class action securities case. Dkt. No. 195. The parties filed a revised motion responsive to the
23 reasons for the denial. Dkt. No. 199. After holding a hearing on the revised request, Dkt. No. 206,
24 preliminary approval is granted. This order is based on a proposed order lodged by plaintiffs and
25 modified according to the Court's conclusions and practices. Counsel and parties should read
26 through the agreement in full, and note the changes to the final approval schedule.

1
2
3 1. Pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, and for
4 purposes of this settlement only, a preliminarily settlement class is certified consisting of all record
5 and beneficial holders of common stock of Oclaro, Inc. (“Oclaro” or “Company”) who held such
6 stock during the period from and including May 15, 2018, the record date for voting on the merger
7 (“Merger”) of Oclaro and Lumentum Holdings, Inc. (“Lumentum”), through and including
8 December 10, 2018, the date the Merger closed, including any and all of their respective
9 predecessors, successors, trustees, executors, administrators, estates, legal representatives, heirs,
10 assigns and transferees (the “Settlement Class”). Excluded from the Settlement Class are (i)
11 Defendants and members of their immediate families; (ii) the officers and directors of the
12 Company and members of their immediate families; (iii) any entity in which Defendants have or
13 had a controlling interest or are controlled by (including Lumentum and Prota Merger, LLC
14 (“Merger Sub, LLC”)); (iv) the legal representatives, heirs, successors or assigns of each
15 Defendant and each officer and director of the Company; and (v) any persons or entities who
16 properly exclude themselves by filing a valid and timely request for exclusion.

17 2. Lead Plaintiff Saisravan Bharadwaj Karri (“Lead Plaintiff”) is preliminarily
18 certified as the class representative and Monteverde & Associates PC is preliminarily certified as
19 Lead Counsel.

20 3. The Court finds, for the purposes of the Settlement only, that the prerequisites for
21 a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been
22 satisfied in that: (a) the number of Settlement Class Members is so numerous that joinder of all
23 members is impracticable; (b) there are questions of law and fact common to the Settlement Class;
24 (c) the claims of Lead Plaintiff are typical of the claims of the Settlement Class he seeks to
25 represent; (d) Lead Plaintiff and Lead Counsel have and will fairly and adequately represent the
26 interests of the Settlement Class; (e) the questions of law and fact common to the Settlement Class
27 Members predominate over any questions affecting only individual Settlement Class Members;
28 and (f) a class action is superior to other available methods for the fair and efficient adjudication
of the controversy.

1
2
3 4. A hearing on final approval of the settlement is set for **FEBRUARY 22, 2024, at**
4 **10 a.m.** (the “Final Approval Hearing”). Settlement Class Members should check the Settlement
5 Class website in advance of the Final Approval Hearing to determine whether that hearing will
6 occur in person at the United States District Court for the Northern District of California, 450
7 Golden Gate Avenue, San Francisco, CA 94102 or via a remote link. At the Final Approval
8 Hearing, the Court will (a) determine whether the proposed Settlement is fair, reasonable, and
9 adequate to the Settlement Class and should be approved by the Court; (b) determine whether an
10 Order and Final Judgment as defined in ¶1.21 of the Stipulation should be entered; (c) determine
11 whether the proposed Plan of Allocation should be approved; (d) determine the amount of
12 attorneys’ fees and expenses that should be awarded to Lead Counsel; (e) determine any award to
13 Lead Plaintiff pursuant to 15 U.S.C. § 78u-4(a)(4); (f) hear any objections by Settlement Class
14 Members to: (i) the Settlement or Plan of Allocation; (ii) certification of the Settlement Class, Lead
15 Plaintiff, and Lead Counsel; (iii) any award to Lead Plaintiff; and/or (iv) the award of attorneys’
16 fees and expenses to Lead Counsel; and (g) consider such other matters the Court deems
17 appropriate. The Court may adjourn the Final Approval Hearing without further notice to the
18 Settlement Class Members.

19 5. The Court approves the form, substance, and requirements of the Notice of
20 Pendency and Proposed Settlement of Class Action (“Notice”) and Proof of Claim and Release, in
21 the forms filed as Exhibits A-1 and A-2, respectively, in Dkt. No. 207.

22 6. The Court approves the form of the Summary Notice, in the form filed as Exhibit
23 A-3 in Dkt. No. 207.

24 7. Defendants will comply with the Class Action Fairness Act, 28 U.S.C. §§ 1711 *et*
25 *seq* (“CAFA”). At least ten (10) calendar days prior to the Final Approval Hearing, Defendants’
26 counsel will file with the Court an appropriate affidavit or declaration regarding compliance with
27 CAFA.
28

1
2
3 8. RG/2 Claims Administrator LLC (the “Claims Administrator”) is appointed to
4 supervise and administer the notice procedure as well as the processing of claims as more fully set
5 forth below.

6 9. Lead Counsel, through the Claims Administrator, will cause the Stipulation and its
7 exhibits, this Order, and a copy of the Notice and Proof of Claim and Release to be posted on the
8 Claims Administrator’s website at www.oclarosecuritieslitigation.com.

9 10. The Claims Administrator will take all reasonable efforts to identify all Settlement
10 Class Members, and after the Court signs and enters this Order (the “Notice Date”), the Claims
11 Administrator shall cause a copy of the Notice and Proof of Claim and Release, substantially in
12 the forms approved in this order, to be mailed by First-Class Mail to all Settlement Class Members
who can be identified with reasonable effort and to be posted on its website identified above.

13 11. Lead Counsel will cause the Summary Notice to be published in *PRNewswire*.

14 12. Lead Counsel will serve on Defendants’ Counsel and file with the Court proof, by
15 affidavit or declaration, of such mailing and publishing.

16 13. Nominees who held Oclaro common stock for the benefit of another Person during
17 the Settlement Class Period will be requested to send the Notice and Proof of Claim and Release
18 to such beneficial owners of Oclaro common stock within fifteen (15) calendar days after receipt
19 thereof, or, send a list of the names and addresses of such beneficial owners to the Claims
20 Administrator within fifteen (15) calendar days of receipt thereof, in which event the Claims
21 Administrator will promptly mail the Notice and Proof of Claim and Release to such beneficial
owners.

22 14. The form and content of the notice program and the methods for notifying the
23 Settlement Class of the Settlement and its terms and conditions, the Fee and Expense Application,
24 and the Plan of Allocation: (a) meet the requirements of Federal Rule of Civil Procedure 23, the
25 United States Constitution (including the Due Process Clause), the Private Securities Litigation
26 Reform Act of 1995, 15 U.S.C. § 78u-4(a)(7), 15 U.S.C. § 77z-1(a)(7) (the “PSLRA”), and are the
best notice practicable under the circumstances; (b) constitute notice that is reasonably calculated,

under the circumstances, to apprise the Settlement Class Members of the pendency of the Litigation, the effect of the proposed Settlement (including the releases contained therein), and of their right to object to the proposed Settlement, exclude themselves from the Settlement Class, and/or appear at the Final Approval Hearing; and (c) constitute due, adequate, and sufficient notice to all Persons entitled thereto. The date and time of the Final Approval Hearing will be included in the Notice and Summary Notice before they are mailed and published, respectively. All fees, costs, and expenses incurred in notifying Settlement Class Members will be paid from the Settlement Fund and in no event will any of the Defendants or Defendants' Released Persons bear any responsibility for such fees, costs or expenses. All Settlement Class Members (except Persons who request exclusion pursuant to ¶20 below) will be bound by all determinations and judgments in the Litigation concerning the Settlement, including, but not limited to, the releases provided for therein, whether favorable or unfavorable to the Settlement Class, regardless of whether such Persons seek or obtain by any means, including, without limitation, by submitting a Proof of Claim and Release or any similar document, any distribution from the Settlement Fund or the Net Settlement Fund.

15. The Court sets the following schedule:

Notice mailed to the Settlement Class	14 calendar days after the Notice Date – entry of the Preliminary Approval Order
Summary Notice published	3 calendar days the Notice Date – entry of the Preliminary Approval Order
Deadline for filing brief in support of Lead Counsel's request for an award of attorneys' fees and expenses and any service award to Lead Plaintiff	November 2, 2023
Last day for submitting Proof of Claim and Release forms	December 21, 2023
Deadline for requesting exclusion from the Settlement Class and objecting to the Settlement, Plan of Allocation, or request for an award of attorneys' fees and expenses	December 21, 2023

Deadline for filing brief in support of the Settlement, certification of the Settlement Class and Plan of Allocation	January 11, 2024
File declaration confirming mailing and publishing Notice and Summary Notice	January 11, 2024
Reply papers in support of the Settlement, Plan of Allocation, or request for an award of attorneys' fees and expenses	January 25, 2024
Final Approval Hearing	February 22, 2024

16. Settlement Class Members who wish to participate in the Settlement must complete and submit the Proof of Claim and Release in accordance with the instructions. Unless the Court orders otherwise, all Proofs of Claim and Releases must be postmarked or submitted electronically no later than the date set forth in ¶15 herein. Any Settlement Class Member who fails to submit a Proof of Claim and Release within the time provided, or whose Proof of Claim and Release is otherwise not approved, will in all other respects be bound by all of the terms of the Stipulation and the Settlement, including the terms of the Order and Final Judgment and the releases provided for therein, and will be barred from asserting any Released Claims against any of the Defendants or Defendants' Released Persons. Notwithstanding the foregoing, Lead Counsel has the discretion (but not the obligation) to accept late-submitted claims for processing by the Claims Administrator so long as distribution of the Net Settlement Fund is not materially delayed thereby. No person shall have any claim against Lead Plaintiff, Lead Counsel or the Claims Administrator by reason of the decision to exercise or not exercise such discretion.

17. The Proof of Claim and Release submitted by each Settlement Class Member must, unless otherwise ordered by the Court: (i) be properly completed, signed and submitted in a timely manner in accordance with the provisions of the preceding paragraph; (ii) be accompanied by adequate supporting documentation for the transactions reported therein, in the form of broker confirmation slips, broker account statements, an authorized statement from the broker containing the transactional information found in a broker confirmation slip, or such other documentation deemed adequate by Lead Counsel or the Claims Administrator; (iii) include in the Proof of Claim

1
2
3 and Release a certification of current authority to act on behalf of the Settlement Class Member if
4 the person executing the Proof of Claim and Release is acting in a representative capacity; (iv) be
5 complete and contain no material deletions or modifications of any of the printed matter contained
6 therein; and (v) be signed under penalty of perjury.

7 18. By submitting a Proof of Claim, a Settlement Class Member will be deemed to have
8 submitted to the jurisdiction of this Court with respect to the Settlement Class Member's claim,
9 including, but not limited to, all releases provided for in the Stipulation and in the Order and Final
10 Judgment.

11 19. Any Settlement Class Member may enter an appearance in the Litigation at their
12 own expense, individually or through counsel of their own choice. If they do not enter an
13 appearance, they will be represented by Lead Counsel.

14 20. Any Person falling within the definition of the Settlement Class may, upon request,
15 be excluded or "opt out" from the Settlement Class. Any such Person must submit to the Claims
16 Administrator a request for exclusion ("Request for Exclusion"), by First-Class Mail postmarked
17 no later than the date set forth in ¶15 herein. A Request for Exclusion must be signed, and state:
18 (a) the name, address, and telephone number of the Person requesting exclusion; (b) the number
19 of shares of Oclaro common stock held during the Settlement Class Period and the dates held
20 during the Settlement Class Period; and (c) that the Person wishes to be excluded from the
21 Settlement Class. All Persons who submit valid and timely Requests for Exclusion in the manner
22 set forth in this paragraph will have no rights under the Stipulation, will not share in the
23 distribution of the Net Settlement Fund, and will not be bound by the Stipulation or any final
24 judgment.

25 Lead Counsel will provide to Defendants' Counsel copies of all Requests for Exclusion
26 and a list of all Settlement Class Members who have requested exclusion, and any written
27 revocation of Requests for Exclusion, as expeditiously as possible and in any event no later than
28 **JANUARY 4, 2024.**

1
2
3 21. Any Settlement Class Member may appear and object if they have any reason why
4 the proposed Settlement of the Litigation should not be approved as fair, reasonable and adequate,
5 or why a judgment should not be entered thereon, why the Plan of Allocation should not be
6 approved, why the requested attorneys' fees and expenses should not be awarded to Lead Counsel,
7 or why any award should not be approved for Lead Plaintiff; provided, however, that no
8 Settlement Class Member or any other Person will be heard or entitled to contest the approval of
9 the terms and conditions of the proposed Settlement, or, if approved, the Order and Final
10 Judgment to be entered thereon approving the same, or the order approving the Plan of Allocation,
11 any attorneys' fees and expenses to be awarded to Lead Counsel, or any award to Lead Plaintiff,
12 unless a written objection is timely submitted to the Court by filing them electronically or in
13 person with the United States District Court for the Northern District of California by the date set
14 forth in ¶15 herein. A written objection and supporting papers must: (a) state the case name and
15 number; (b) provide the objector's name, address, and telephone number; (c) specify the reason(s)
16 for the objection; (d) identify the date(s), price(s), and number(s) of shares of Oclaro common
17 stock held during the Settlement Class Period by the objector; (e) provide documents
18 demonstrating such holding(s); and (f) be signed by the objector. Any Member of the Settlement
19 Class who does not make their objection in the manner provided for herein will be deemed to
20 have waived such objection and shall forever be foreclosed from making any objection to the
21 fairness, reasonableness, or adequacy of the proposed Settlement as incorporated in the
22 Stipulation, to the Plan of Allocation, to the award of attorneys' fees and expenses to Lead
23 Counsel, and to any award to Lead Plaintiff, unless otherwise ordered by the Court. Attendance
24 at the Final Approval Hearing is not necessary. Objectors wishing to be heard at the hearing must
25 so indicate in their written objection. Settlement Class Members do not need to appear at the
26 Final Approval Hearing or take any other action to indicate their approval of the Settlement.

27
28 22. All funds held by the Escrow Agent shall be deemed and considered to be in
custodia legis of the Court, and will remain subject to the jurisdiction of the Court, until such time
as such funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

1
2
3 23. Defendants' Released Persons will have no responsibility for the Plan of
4 Allocation, any application for attorneys' fees and expenses submitted by Lead Counsel, or any
5 award to Lead Plaintiff, and such matters will be considered separately from the fairness,
6 reasonableness, and adequacy of the Settlement.

7 24. At or after the Final Approval Hearing, the Court will determine whether the Plan
8 of Allocation proposed by Lead Counsel, and whether any application for attorneys' fees and
9 expenses, should be approved.

10 25. All reasonable expenses incurred in identifying and notifying Settlement Class
11 Members as well as administering the Settlement Fund shall be paid as set forth in the Stipulation.
12 In the event the Court does not approve the Settlement, or it otherwise fails to become effective,
13 neither Lead Plaintiff nor any of their counsel, including Plaintiff's Counsel, will have any
14 obligation to repay any amounts actually and properly incurred or disbursed pursuant to ¶2.7 of
15 the Stipulation.

16 26. Neither the Stipulation, nor any of its terms or provisions, nor any of the
17 negotiations, discussions, proceedings connected with it, nor any act performed or document
18 executed pursuant to or in furtherance of the Stipulation or the Settlement may be construed as an
19 admission, concession, or presumption by or against any of the Defendants or Defendants'
20 Released Persons of the truth of any of the allegations in the Litigation, or of any liability, fault,
21 or wrongdoing of any kind; or as a waiver by any of the Parties of any arguments, defenses, or
22 claims he, she, or it may have in the event the Stipulation is terminated; or offered or received in
23 evidence, or otherwise used by any person in the Litigation, or in any other action or proceeding,
24 whether civil, criminal, or administrative, in any court, administrative agency, or other tribunal,
25 except in connection with any proceeding to enforce the terms of the Stipulation. The Defendants,
26 Defendants' Released Persons, Lead Plaintiff, Settlement Class Members, and each of their
27 counsel may file the Stipulation and/or the Order and Final Judgment in any action that may be
28 brought against them in order to support a defense or counterclaim based on principles of res

judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

27. If the Settlement fails to become effective as defined in the Stipulation or is terminated, then, in any such event, the Stipulation, including any amendment(s) thereof, except as expressly provided in the Stipulation, and this Order shall be null and void, of no further force or effect, and without prejudice to any Settling Party, and may not be introduced as evidence or used in any actions or proceedings by any person or entity against the Settling Parties, and they shall be deemed to have reverted to their respective positions in the Litigation as of January 10, 2023, prior to mediation.

IT IS SO ORDERED.

DATED: August 28, 2023



JAMES DONATO
UNITED STATES DISTRICT JUDGE