

1 Frederick J. Geonetta (SBN 114824)
 2 Kenneth N. Frucht, (SBN 178881)
 3 GEONETTA & FRUCHT
 4 100 Montgomery Street, Suite 1600
 5 San Francisco, CA 94104
 6 Tel: (415) 421-4770
 7 Tel: (415) 392-4844
 8 Fax: (415) 421-4785
 9 Fax: (415) 392-7973

10 Attorneys for Plaintiff
 11 MMCA Group, Ltd.

12 **IN THE UNITED STATES DISTRICT COURT**
 13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 14 **SAN FRANCISCO DIVISION**

<p>14 MMCA GROUP, LTD., a Virginia 15 corporation, 16 Plaintiff 17 v. 18 HEWLETT-PACKARD COMPANY, a 19 Delaware corporation, PICA, an Ohio 20 corporation, 21 Defendants.</p>	<p>Civil Action No. CV 06-07067-MMC (EMC)</p> <hr/> <p>STIPULATION AND PROPOSED ORDER SETTING FURTHER CASE MANAGEMENT CONFERENCE (BY TELEPHONE)</p> <hr/> <p>[Fed. R. Civ. Proc. 16, Civil L.R. 16-10, 7-12] [No Hearing Required]</p> <p>Judge: Hon. Maxine M. Chesney</p>
--	---

1 I. INTRODUCTION

2 Since the last Case Management Conference held on June 12, 2009, the parties have
3 worked diligently to reschedule depositions and complete discovery by the deadlines set at that
4 hearing. However, several developments have arisen that make it necessary for the parties to
5 again request a case status and scheduling hearing with the Court, and to ask the Court to reset
6 several discovery related dates. PICA agrees to the request for a change in the case management
7 dates. However, PICA may also have additions to certain sections of the Joint Case Management
8 Statement (Exhibit A), but has not determined whether it will make those changes as of the date of
9 this filing and thus cannot sign off on the stipulation and Case Management Statement. Therefore,
10 in order to alert the Court to the request for an adjustment of the Case Management Schedule as
11 soon as possible, this stipulation, and the Joint Case Management Statement are signed only by
12 MMCA and HP. PICA expects to join in the Stipulation and Case Management Statement as soon
13 as it determines what changes it desires in the Case Management Statement. If the Court sets the
14 Case Management Conference on August 28, 2009 as requested, PICA's counsel may have to
15 appear by phone from Ohio, because PICA's other counsel will be attending a deposition in San
16 Francisco.

17 The changes requested will not impact the trial date and the parties do not seek or desire a
18 new trial date. However, despite the diligence of the parties there are several remaining witnesses
19 whose depositions have not yet been completed. Additionally, a discovery dispute relating to
20 Defendants' highly sensitive business information has only recently been resolved through an
21 extensive meet and confer process, and the late production of this information will not leave
22 enough time for the parties experts to review and analyze the information and incorporate it into
23 their Rule 26 expert disclosures and reports. Accordingly, the parties seek a Case Management
24 Conference in order to discuss case status and scheduling with the Court. The parties ask the
25 Court to extend the fact discovery cut-off by two weeks in order to allow completion of certain
26 specified depositions, to allow extension of the expert discovery dates, and to also allow additional
27 time (two weeks total from the current schedule) to file supplemental briefing on Defendants'

1 respective motions for summary judgment. The parties do not seek a general extension of the
2 discovery cut-off – but rather seek the extension only for the purpose of taking the depositions that
3 were previously scheduled and that the parties have been unable, despite much effort, to complete.
4 The parties respectfully submit this stipulation and [proposed] order pursuant to Federal Rule of
5 Civil Procedure 16 and Civil Local Rules 16-10 and 7-12 requesting that the Court set a further
6 case management conference on or prior to August 28. Included herein as Exhibit A is a joint case
7 management conference statement.

8 II. BACKGROUND

9 At the last Case Management Conference on June 12, 2009, the Court reset the trial date to
10 January 19, 2010, and set the fact discovery cut-off and expert disclosures to August 28, 2009.
11 Since that hearing, the parties have scheduled and completed 14 days of depositions, including a
12 week of depositions in Miami, a deposition in Idaho, and depositions in San Francisco of
13 witnesses from South America, South Africa, Washington D.C. and Texas. The scheduling of
14 several remaining witnesses, and the fourth and final day of one other witness, has proved
15 impossible because of last minute and previously unknown changes to the schedules of these
16 witnesses, and because of the general difficulty in coordinating and scheduling the depositions of
17 so many witnesses from so many different locations. The remaining witnesses who could not be
18 deposed by August 28, 2009 are: Jorge Mendoza, who works in the American Embassy in Peru,
19 and whose scheduled August 25 deposition date had to be postponed when he learned that he had
20 to provide security to U.S. legislative committees visiting Peru during Congress' August recess;
21 Robert Creswell, who has business operations in Brazil and whose scheduled August 18, 2009
22 deposition date was cancelled because of a misunderstanding relating to his travel schedule;
23 Robert Cozzolina, who lives in New Jersey, and whose deposition was previously scheduled but
24 had to be postponed because of the need to accommodate out of country witnesses, and; Tom
25 Byrne, who lives in Virginia, and whose fourth and final day of deposition will be taken at the
26 time of Jorge Mendoza's deposition. In addition, HP has subpoenaed three third-party corporate
27 entities and their depositions may not be completed before the current fact discovery cut-off

1 because other scheduled depositions create timing conflicts.

2 In addition to the need to schedule depositions beyond the August 28, 2009 discovery cut-
3 off, the parties have been involved in a meet and confer process regarding MMCA's discovery
4 requests seeking information on HP's profit margins for HP's toner and inkjet products. This
5 information constitutes some of HP's most highly sensitive and confidential business information.
6 While MMCA believes this information is necessary to prove damages under an unjust enrichment
7 theory, HP disputes MMCA's damage theory. Nevertheless, the parties have engaged in a lengthy
8 meet and confer process which required extensive consideration by HP, and which finally resulted
9 in an agreement that HP will produce this information. The parties anticipate that HP's response
10 to this request will be provided by August 24, 2009. MMCA and PICA have engaged in a similar
11 dialogue regarding PICA's profit margins, and MMCA anticipates that it will also receive this
12 information shortly. The discovery responses from both HP and PICA will need to be analyzed
13 and evaluated by MMCA's damages experts, and then incorporated into a Rule 26 expert
14 disclosure and report. With the timing of the production of these responses, the expert disclosures
15 and reports cannot be completed by August 28, 2009.

16 As a result of the forgoing, the Parties need an additional two weeks to complete the
17 remaining depositions discussed above and make their expert disclosures, and an extension on the
18 time to complete expert discovery. The parties lastly seek a brief extension on the time for
19 submitting their supplemental briefing on the summary judgment motions previously submitted.
20 The parties do not request any other adjustments to the case management schedule, including the
21 trial date, and do not believe that any other changes are necessary.

22 III. CONCLUSION

23 For the reasons discussed above the parties respectfully request that the Court set a further
24 case management conference and accept the attached Exhibit A as the parties' joint case
25 management conference statement.

26 DATED: August 21, 2009

By: /s/ Kenneth Frucht
Kenneth Frucht
GEONETTA & FRUCHT LLP
120 Montgomery Street, Suite 1600

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

San Francisco, CA 94104
Telephone: (415) 421-4770
Facsimile (415) 421-4785

Attorneys for Plaintiff
MMCA GROUP, LTD.

DATED: August 21, 2009

By: /s/ William F. Abrams

William F. Abrams
BINGHAM MCCUTCHEN LLP
1900 University Avenue
East Palo Alto, CA 94303
Telephone: (650) 849-4400
Facsimile: (650) 849-4800

Attorneys for Defendant
HEWLETT-PACKARD COMPANY

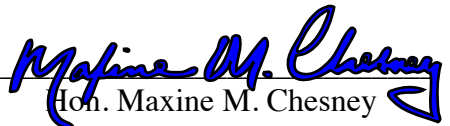
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

~~Proposed~~ Order

IT IS HEREBY ORDERED that the parties appear for a further case management conference before the Honorable Maxine M. Chesney on August 28, 2009 at 10:30 a.m. The Court accepts the parties' joint case management conference statement, submitted as Exhibit A, to the above stipulation. All counsel are directed to appear by telephone.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: August 24, 2009


Hon. Maxine M. Chesney
United States District Judge