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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NETWORK APPLIANCE, INC.,

Plaintiff,

v.

SUN MICROSYSTEMS INC.,

Defendant.

No. C-07-06053 EDL

**ORDER REGARDING NOVEMBER 5,
2009 JOINT LETTER BRIEF**

On November 5, 2009, the parties submitted a joint letter brief regarding a discovery dispute over the consequences of an internal email produced by Sun in August 2009 (after the close of discovery) as document SUN05523442. Based on a review of the joint letter brief, the Court concludes that it would be premature to rule on the issues raised therein at this time. The upcoming depositions of Mr. Wong and Mr. Weinberg should clarify the meaning and import of the email in question and obviate the need for at least some of the additional discovery requested by NetApp. NetApp's request to re-depose Ms. Krall is also premature prior to these depositions, as the parties have agreed to discuss an additional deposition of her following the depositions of Mr. Wong and Mr. Weinberg. NetApp's request for additional document requests is also premature, as the parties have not met and conferred on this issue and may be able to come to a resolution without court involvement. Following the depositions of Mr. Wong and Mr. Weinberg, if portions of this discovery dispute remain unresolved, the Court will entertain a two-page letter brief summarizing the remaining issues and suggesting what method the Court should use to resolve them. The Court notes that it will likely need to see the email in question, rather than have it selectively quoted in the letter, if the dispute remains unresolved.

The parties have also submitted briefing regarding whether or not portions of the joint letter

1 brief should be filed under seal. Sun is correct that NetApp should have filed a noticed motion
2 pursuant to the Stipulated Protective Order, and in the future NetApp should adhere to that
3 procedure. However, to expedite matters, the Court will allow Sun to respond to NetApp's
4 Objection in the form of a brief five pages or less by no later than Tuesday, November 17, 2009.
5 The Court will then decide on the sealing issue.

6
7 **IT IS SO ORDERED.**

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9 Dated: November 12, 2009



ELIZABETH D. LAPORTE
United States Magistrate Judge