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6 Attorneys for Defendants Richard S. Fuld,
 Jr., Michael L. Ainslie, Roland A.
 7 Hernandez, David Goldfarb, John F. Akers,
 Roger S. Berlind, Joseph M. Gregory,
 8 Thomas H. Cruikshank, Marsha Johnson
 Evans, Henry Kaufman, John D. Macomber,
 9 Thomas A. Russo, and Christopher M.
 O'Meara

10
 11 UNITED STATES DISTRICT COURT
 12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 13 SAN FRANCISCO DIVISION
 14

15 OPENWAVE SYSTEMS INC.,

CV 08 5683 (SI)

16 Plaintiff,

**JOINT STIPULATION AND
 [PROPOSED] ORDER TO TAKE OFF
 CALENDAR THE HEARING ON
 DEFENDANTS' MOTIONS TO
 DISMISS THE FIRST AMENDED
 COMPLAINT AND MOTION TO
 COMPEL ARBITRATION**

17 v.

18 RICHARD S. FULD, JR., MICHAEL L. AINSLIE,
 ROLAND A. HERNANDEZ, DAVID GOLDFARB,
 19 JOHN F. AKERS, ROGER S. BERLIND, JOSEPH
 M. GREGORY, THOMAS H. CRUIKSHANK,
 20 MARSHA JOHNSON EVANS, HENRY
 KAUFMAN, JOHN D. MACOMBER, THOMAS A.
 21 RUSSO, CHRISTOPHER M. O'MEARA,
 MICHAEL GELBAND, ALEX KIRK, MELISSA
 22 CONROY WHITNEY, TIM FORD, and DOES 1 -
 50, inclusive,

23 Defendants.
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1 Pursuant to Civil Local Rules 6-2, 7-7(b) and 7-12 of the Local Civil Rules for the
2 United States District Court for the Northern District of California, Plaintiff Openwave Systems
3 Inc. (“Plaintiff”) and Defendants Richard S. Fuld, Jr., Michael L. Ainslie, Roland A. Hernandez,
4 David Goldfarb, John F. Akers, Roger S. Berlind, Joseph M. Gregory, Thomas H. Cruikshank,
5 Marsha Johnson Evans, Henry Kaufman, John D. Macomber, Thomas A. Russo, Christopher M.
6 O’Meara, Melissa Conroy Whitney, and Tim Ford (“Defendants”), by and through their respective
7 counsel, submit this Joint Stipulation and Proposed Order to take off calendar, not make any
8 rulings, tentative or final, or otherwise take any further action in connection with the hearing on
9 Defendants’ motions to dismiss the First Amended Complaint and motion to compel arbitration of
10 this action.

11 WHEREAS, the parties have fully briefed two motions by Defendants to dismiss
12 the First Amended Complaint and one motion by Defendants to compel arbitration (**Docket**
13 **Numbers 93, 94, 95, 96, 97, 98, 99, 100, and 101**) (collectively, the “Motions”);

14 WHEREAS, the Motions are scheduled to be heard at 9:00 a.m. on October 30,
15 2009 (the “Hearing”);

16 WHEREAS, on October 19, 2009, Plaintiff and Defendants reached an agreement
17 in principle to resolve the above-captioned matter; and

18 WHEREAS, the parties agree that this Stipulation does not waive any of the rights
19 or defenses available to any party, and that, pending execution of a formal settlement agreement,
20 each party reserves its rights to assert any and all rights and defenses in the future, including but
21 not limited to personal jurisdiction defenses and the right to compel arbitration;

22 NOW THEREFORE THE PARTIES JOINTLY REQUEST THE FOLLOWING:

23 1. The Hearing on the Motions to be taken off calendar, that the Court not
24 make any rulings, tentative or final, or otherwise take any further action on the Motions at this
25 time.

26 2. Pending execution of a formal settlement agreement, the parties do not
27 waive, and expressly reserve, all rights and defenses they may have in this action.

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3. The parties shall provide the Court with a stipulation of settlement or a status report on or before December 4, 2009.

Dated: October 20, 2009

COBLENTZ, PATCH, DUFFY & BASS LLP

By /s/
 Howard A. Slavitt
Attorneys for Plaintiff Openwave Systems Inc.

Dated: October 20, 2009

SIMPSON THACHER & BARTLETT LLP

By /s/
 James G. Kreissman
*Attorneys for Defendants Richard S. Fuld, Jr.,
 Michael L. Ainslie, Roland A. Hernandez, David
 Goldfarb, John F. Akers, Roger S. Berlind,
 Joseph M. Gregory, Thomas H. Cruikshank,
 Marsha Johnson Evans, Henry Kaufman, John
 D. Macomber, Thomas A. Russo, and
 Christopher M. O'Meara*

Dated: October 20, 2009

JONES DAY

By /s/
 Philip E. Cook
*Attorneys for Defendants Melissa Conroy
 Whitney and Tim Ford*

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: _____



 The Honorable Susan Illston
 United States District Court Judge

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ECF FILER'S ATTESTATION

I, James G. Kreissman, as the e-filing signatory, attest that concurrence in filing the Notice of Continuance of Motions to Dismiss and Motion to Compel Arbitration, and Stipulated Briefing Schedule has been obtained from the other signatories Howard A. Slavitt and Philip E Cook. In accordance with General Order 45, Section X(B), I shall maintain a record of their concurrence for subsequent production for the court if so ordered or for inspection upon request by a party until one year after final resolution of the action.

Dated: October 20, 2009

By: _____ /s/
James G. Kreissman