

1 MICHAEL A. JACOBS (CA SBN 111664)
 MJacobs@mofo.com
 2 ARTURO J. GONZÁLEZ (CA SBN 121490)
 AGonzalez@mofo.com
 3 ALEXANDRIA A. AMEZCUA (CA SBN 247507)
 AAmezcu@mofo.com
 4 DIANA B. KRUZE (CA SBN 247605)
 DKruze@mofo.com
 5 MORRISON & FOERSTER LLP
 425 Market Street
 6 San Francisco, CA 94105-2482
 Telephone: 415.268.7000
 7 Facsimile: 415.268.7522

8 Attorneys for Defendant
 9 VMWARE, INC.

10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA
 12 SAN FRANCISCO DIVISION

13 PHOENIX TECHNOLOGIES LTD, a
 14 Delaware corporation,

15 Plaintiff,

16 v.

17 VMWARE, INC., a Delaware corporation,

18 Defendant.

19 VMWARE, INC., a Delaware corporation,

20 Counterclaimant,

21 v.

22 PHOENIX TECHNOLOGIES LTD, a
 23 Delaware corporation,

24 Counterdefendant.

Case No. 15-cv-01414-HSG

**JOINT STIPULATION AND ORDER
 RE: PRETRIAL DEADLINES**

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

STIPULATION AND [PROPOSED] ORDER

Pursuant to Civil Local Rules 6-2 and 7-11, and the October 25, 2016 scheduling conference with the Court, Phoenix Technologies Ltd. (“Phoenix”) and VMware, Inc. (“VMware”) file this joint stipulation regarding revised pretrial deadlines and stipulate as follows:

WHEREAS, the Court proposed that the trial in this matter be reset to February 20, 2017 (Dkt. 200);

WHEREAS, on November 1, 2016, the Parties filed a status report notifying the Court that Phoenix had a conflict with the Court’s proposed date (Dkt. 201);

WHEREAS, the Parties propose that the trial in this matter be reset to February 13, 2017;

WHEREAS, the Parties propose that the final pretrial conference in this matter be reset to January 31, 2017;

WHEREAS, the Court’s Standing Order for Civil Pre-Trial and Trial matters is silent as to certain deadlines, such as the deadline for exchange of exhibit objections, counter-designations and objections to deposition designations;

WHEREAS, the Parties believe it would be helpful to have a detailed exchange protocol for demonstratives;

WHEREAS, the Parties believe it would be helpful to exchange proposed jury instructions, voir dire questions, and proposed verdict forms in advance of filing them with the Court to minimize disputes;¹

NOW, THEREFORE, the Parties hereby stipulate and agree to the following:

- ◆ The parties shall file oppositions to the already-filed *in limine* motions on January 17, 2017.
- ◆ The Parties will exchange drafts of proposed jury instructions, voir dire questions, and proposed verdict forms on January 10, 2017. Thereafter, the Parties shall meet and confer in an effort to minimize disputes. The Plaintiff shall file a final set of

¹ The proposals regarding demonstratives and other pretrial exchanges are similar to those found in the parties’ previously-filed stipulation. (ECF No. 176.) Docket No. 176 is mooted by the instant stipulation.

1 joint jury instructions, voir dire questions, and proposed verdict form on
2 January 17, 2017. All other provisions regarding the jury instructions, voir dire
3 questions, and verdict forms in the Court's Standing Order for Civil Pre-Trial and
4 Trial matters shall remain in effect.

- 5 ♦ The following table summarizes all remaining deadlines:

6

7

Event	New Date
Parties shall exchange exhibit objections, counter-designations and objections to deposition designations.	January 6, 2017
Parties shall exchange drafts of proposed jury instructions, voir dire questions and proposed verdict form.	January 10, 2017
Parties shall exchange objections to deposition counter-designations.	January 17, 2017
Plaintiff to file joint pretrial statement, statement of the case, proposed jury instructions, voir dire questions, and proposed verdict form.	January 17, 2017
Last day to file trial briefs (optional).	January 17, 2017
Last day to file oppositions to motions <i>in limine</i> .	January 17, 2017
Last day to submit binders to Court pursuant to ¶ 5 of the Court's standing order.	January 18, 2017
Final Pretrial Conference	January 31, 2017
Last day to submit binders to Court pursuant to ¶ 20 of the Court's standing order.	February 6, 2017
First Day of Trial	February 13, 2017

8

9

10

11

12

13

14

15

16

17

18

19

- 20
- 21 ♦ Demonstratives (e.g., graphics, charts, diagrams, illustrative animations, models,
22 etc.) need not be disclosed with evidentiary exhibits pursuant to paragraph 2 of the
23 Court's Civil Pre-trial and Trial Standing Order. Instead, the parties agree that
24 expert and fact witnesses may use demonstrative presentations that illustrate their
25 testimony. The parties reserve their right to object to demonstratives on any
26 appropriate grounds for objection. Each party shall disclose to the other party all
27 demonstratives that such party will use during the direct examination of a witness
28 or expert witness via email no later than 5:00 p.m. the night before such witness is

1 scheduled to testify. Each party shall disclose to the other party all demonstratives
2 that such party will use during the cross examination of a witness or expert witness
3 just prior to the beginning of that witness's or expert's cross examination so that
4 the other party may have sufficient time to review them and raise objections before
5 the examination begins. Excerpts, call-outs, blow-ups, or highlighting of admitted
6 exhibits, without more, are exempt from exchange. After demonstratives have
7 been used during trial, the parties may "lodge" them in the case docket in order for
8 them to become part of the official record of the case. They will not be admitted
9 as exhibits. The disclosure of demonstratives that the parties plan to use in the
10 opening statement shall be governed by a separate procedure outlined in the Joint
11 Pretrial Statement.

12
13
14 **IT IS SO STIPULATED.**

15 Dated: November 16, 2016

Dated: November 16, 2016

16 COOLEY LLP

MORRISON & FOERSTER LLP

17 */s/ Whitty Somvichian*

/s/ Diana Kruze

18 Whitty Somvichian

Diana Kruze²

19 Attorneys for Plaintiff and Counterdefendant
20 PHOENIX TECHNOLOGIES LTD.

Attorneys for Defendant and Counterclaimant
VMWARE, INC.


21
22
23
24
25
26
27 ² I, Diana Kruze, am the ECF User whose ID and password are being used to file this Declaration.
28 In compliance with Civil L.R. 5-1(i)(3). I hereby attest that Whitty Somvichian has concurred in
this filing.

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

ORDER

**PURSUANT TO THE PARTIES' STIPULATION,
IT IS SO ORDERED.**

Date: November 17, 2016


Honorable Haywood S. Gilliam, Jr.
United States District Judge