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13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA
 15 SAN FRANCISCO DIVISION

16 ORACLE AMERICA, INC., a Delaware
 17 corporation; ORACLE INTERNATIONAL
 18 CORPORATION, a California corporation

Plaintiffs,

v.

21 HEWLETT PACKARD ENTERPRISE
 COMPANY, a Delaware corporation; and DOES
 22 1-50,

Defendants.

CASE NO. 3:16-cv-01393-JST

**STIPULATION AND ~~PROPOSED~~
 ORDER RE: DISCOVERY TO BE
 TAKEN AFTER THE FACT
 DISCOVERY DEADLINE**

1 WHEREAS, non-party BP America, Inc. (“BP”) recently brought a motion for a
2 protective order against the deposition subpoena issued by plaintiffs Oracle America Inc. and
3 Oracle International Corporation (collectively, “Oracle”) and, on August 25, 2017, Magistrate
4 Judge Laporte ordered BP to present its designee under Rule 30(b)(6) for deposition no later than
5 October 2, 2017. (*See* Dkt. No. 324);

6 WHEREAS, in light of the circumstances surrounding Hurricane Harvey, which
7 impacted BP’s operations in Houston, Texas, BP requested, and Oracle has stipulated to, a
8 continuance of the deposition to October 5, 2017 instead. (*See* Dkt. No. 331);

9 WHEREAS, Oracle has served both document and deposition subpoenas on third parties
10 ON Semiconductor (“ON Semi”) and Charter Communications (“Charter”), however discovery
11 into these customers will need to be completed shortly after the existing fact discovery deadline
12 to accommodate those third-parties and their schedules, including significant unanticipated
13 difficulties those non-parties have encountered gathering documents responsive to Oracle’s
14 subpoenas;

15 WHEREAS, HPE has served both document and deposition subpoenas on third-party
16 Gartner Inc. that Gartner Inc. has indicated cannot be completed before October 2, 2017 due to
17 extenuating circumstances;

18 WHEREAS, Oracle has requested the deposition of HPE employee Gary Olsen, for
19 whom HPE has not yet identified a deposition date;

20 WHEREAS, HPE has requested the deposition of Oracle employee Samuel Chan, who
21 Oracle contends is not available for deposition until October 19, 2017;

22 WHEREAS, HPE has subpoenaed for deposition former Oracle employee Miriam
23 Wagner, who Oracle contends is not available for deposition until October 3, 2017;

24 WHEREAS, Oracle has requested the deposition of former HPE employee Phillip
25 Whitaker, that deposition has not yet been scheduled, and Oracle and HPE enter into this
26 stipulation without prejudice to Oracle’s right to seek relief with respect to Mr. Whitaker’s
27 deposition, including the ability to depose Mr. Whitaker after the close of discovery, or HPE’s or
28 Mr. Whitaker’s right to oppose, on any ground, any such relief Oracle might seek;

1 WHEREAS, the parties stipulate that this agreement will not be used by either side as a
2 basis to extend discovery for any other reason; neither party currently anticipates or has proposed
3 extending the fact discovery cutoff for any reason, however both sides reserve their right to move
4 to compel discovery in the time period allotted under Local Rule 37-3;

5 NOW, THEREFORE, the parties hereby stipulate and request that the Court order that
6 the following exceptions be permitted to the October 2, 2017 fact discovery cutoff:

7 (i) Oracle's deposition of BP shall take place on October 5, 2017.

8 (ii) ON Semi and Charter's document production and depositions may be allowed to
9 take place after October 2, 2017, but no later than October 20, 2017.

10 (iii) Gartner Inc.'s document production and deposition may be allowed to take place
11 after October 2, 2017, but no later than October 20, 2017.

12 (iv) Oracle's deposition of Gary Olsen may be allowed to take place after October 2,
13 2017, but no later than October 20, 2017.

14 (v) HPE's deposition of Samuel Chan may be allowed to take place on October 19,
15 2017.

16 (vi) HPE's deposition of Miriam Wagner may be allowed to take place on October 3,
17 2017.

18 **IT IS SO STIPULATED.**

19 Dated: October 2, 2017

LATHAM & WATKINS LLP

20 By: /s/ Christopher S. Yates
21 Christopher S. Yates
22 Attorneys for Plaintiffs
Oracle America, Inc. and
Oracle International Corporation

23 Dated: October 2, 2017

GIBSON, DUNN & CRUTCHER LLP


24 By: /s/ Joseph Gorman
25 Joseph Gorman
26 Attorneys for Defendant
27 Hewlett Packard Enterprise Company

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PURSUANT TO STIPULATION, IT IS SO ORDERED

Dated: October 3, 2017

By: 
THE HONORABLE JON S. TIGAR
UNITED STATES DISTRICT JUDGE

SIGNATURE ATTESTATION

I, Christopher S. Yates, am the ECF User whose identification and password are being used to file the foregoing letter. Pursuant to Civil Local Rule 5-1(i)(3) regarding signatures, I attest that concurrence in the filing of this document has been obtained.

Dated: October 2, 2017

LATHAM & WATKINS LLP

By: /s/ Christopher S. Yates
Christopher S. Yates

Attorneys for Plaintiffs
Oracle America, Inc. and
Oracle International Corporation