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

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

19 Plaintiffs,

20 v.

21 HEWLETT PACKARD ENTERPRISE  
 22 COMPANY, a Delaware corporation; and DOES  
 23 1-50,

24 Defendants.

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

**JOINT STIPULATION AND  
~~PROPOSED~~ ORDER BY  
 DEFENDANT HEWLETT PACKARD  
 ENTERPRISE COMPANY AND  
 PLAINTIFFS ORACLE AMERICA  
 INC. AND ORACLE INTERNATIONAL  
 CORPORATION TO TAKE LIMITED  
 DISCOVERY AFTER THE FACT  
 DISCOVERY DEADLINE**

1 Plaintiffs Oracle America, Inc. and Oracle International Corporation (together “Oracle”) and  
2 Defendant Hewlett Packard Enterprise Company (“HPE”) (together, the “Parties”) submit the  
3 following joint stipulation in response to the Court’s October 16, 2017 order entered by Magistrate  
4 Judge Laporte concerning a Joint Discovery Letter Brief submitted by the Parties pursuant to Local  
5 Rule 37-3 (the “October 16 Order”):

6 WHEREAS, fact discovery in this matter closed on October 2, 2017 (ECF No. 312);

7 WHEREAS, Local Rule 37-3 permits the parties to submit motions to compel discovery “7  
8 days after the discovery cut-off”;

9 WHEREAS, on October 3, 2017, the Parties submitted a Joint Discovery Letter Brief wherein  
10 HPE sought to compel Oracle to produce documents and deposition testimony from Mark Hurd and  
11 Oracle sought to compel HPE to produce documents and deposition testimony from Meg Whitman  
12 (ECF No. 354);

13 WHEREAS, on October 16, 2017, Magistrate Judge Laporte issued an Order on the Parties’  
14 Joint Discovery Letter Brief (ECF No. 394);

15 WHEREAS, the October 16 Order requires Oracle to do the following: “Within two weeks,  
16 Oracle shall search the collection of Hurd documents described in the parties’ joint letter brief and  
17 produce any non-privileged documents that result, with any redacted documents and a privilege log  
18 covering all redacted or withheld-in-full documents to follow shortly thereafter.” (*id.*);

19 WHEREAS, the October 16 Order further requires Oracle to “produce Hurd for a deposition,  
20 on a date that is mutually acceptable to the parties. The deposition is limited to 4 hours and to Hurd’s  
21 knowledge of customers’ rationales for leaving or returning to Oracle. The parties should agree to  
22 extend the deposition if solid justification appears.” (*id.*);

23 WHEREAS, the October 16 Order requires HPE to, “within one week, . . . produce the emails  
24 between Whitman and an HPE customer, referred to in the parties’ joint letter brief at page 9, as  
25 originally exchanged.” (*id.*);

26 WHEREAS, the aforementioned discovery ordered in the October 16 Order will take place  
27 after the discovery cutoff of October 2, 2017, and Judge Laporte instructed the Parties to “seek leave  
28

1 of the District Judge to take this discovery after the fact discovery deadline.” (*id.*);

2 WHEREAS, in light of Judge Laporte’s October 16 Order, good cause exists to permit this  
3 limited discovery after the fact discovery cutoff;

4 WHEREAS, for the avoidance of doubt, the Parties are not proposing an extension of the fact  
5 discovery period; rather, the Parties are merely seeking this Court’s approval to exchange discovery  
6 after the fact discovery cutoff as ordered by Judge Laporte, and as anticipated by the Local Rules;

7 WHEREAS, nothing in this stipulation shall be interpreted as any waiver of the Parties’ rights  
8 to relief from Judge Laporte’s October 16 Order;

9 NOW, THEREFORE, the parties hereby stipulate and request that the Court permit the Parties  
10 to exchange the discovery ordered by Judge Laporte in the October 16 Order by the dates set forth in  
11 that Order.

12 **IT IS SO STIPULATED.**

13  
14 Dated: October 20, 2017

GIBSON, DUNN & CRUTCHER LLP

15 By: /s/ Samuel G. Liversidge  
16 Samuel G. Liversidge  
17 Attorneys for Defendant  
Hewlett Packard Enterprise Company

18 Dated: October 20, 2017

LATHAM & WATKINS LLP

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

23 **PURSUANT TO STIPULATION, IT IS SO STIPULATED.**

24  
25 Dated: October 24, 2017

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