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 7
 8 **UNITED STATES DISTRICT COURT FOR THE**
NORTHERN DISTRICT OF CALIFORNIA
 9 **OAKLAND DIVISION**

10 PAUL PARSHALL, Individually and On Behalf
 of All Others Similarly Situated,

11
12 Plaintiff,

13 v.

14 NIMBLE STORAGE, INC., SURESH
 WASUDEVAN, VARUN MEHTA, FRANK
 15 CALDERONI, JAMES J. GOETZ, WILLIAM
 JENKINS JR., JERRY M. KENNELLY,
 16 WILLIAM J. SCHROEDER, BOB KELLY,
 17 HEWLETT PACKARD ENTERPRISE
 COMPANY, AND NEBRASKA MERGER
 18 SUB, INC.,

19 Defendants.

Case No. 4:17-cv-01538-HSG

CLASS ACTION

**STIPULATION AND ORDER
 VOLUNTARILY DISMISSING
 ACTION AS MOOT PURSUANT TO
 FED. R. CIV. P. 41(a)(1)(A)(ii) AND
 AGREEMENT BY PLAINTIFFS'
 COUNSEL TO SEEK AN AWARD OF
 ATTORNEYS' FEES AND
 REIMBURSEMENT OF EXPENSES IN
 RELATED ACTION**

Judge: Hon. Haywood S. Gilliam, Jr.
 Crtrm.: 2, 4th Floor

1 WHEREAS, on March 22, 2017, Plaintiff Paul Parshall filed the above-captioned action
2 (the “Parshall Action”);

3 WHEREAS, shortly thereafter, Plaintiff Dennis Huston and Plaintiff David Ettel filed
4 substantially similar actions to the Parshall Action, styled *Dennis Huston v. Nimble Storage, Inc.*
5 *et al.*, Case No. 3:17-cv-01533-JSW (the “Huston Action”) and *Ettel v. Nimble Storage, Inc. et*
6 *al.*, Case No. 5:17-cv-01599 (the “Ettel Action”) (and collectively with the Ettel Action, the
7 “Actions”);

8 WHEREAS, the Actions challenged the public disclosures made in connection with the
9 proposed acquisition of Nimble Storage, Inc. (“Nimble Storage”), by Hewlett Packard Enterprise
10 Company and its wholly-owned subsidiary, Nebraska Merger Sub, Inc., pursuant to a definitive
11 agreement and plan of merger filed with the United States Securities and Exchange Commission
12 (“SEC”) on or around March 7, 2017 (the “Transaction”);

13 WHEREAS, the Actions asserted claims for violations of sections 14(d), 14(e), and 20(a)
14 of the Securities Exchange Act of 1934 by Defendants alleged to have been made in Nimble
15 Storage’s Solicitation/Recommendation Statement (the “Solicitation Statement”) filed with the
16 SEC on or around March 17, 2017;

17 WHEREAS, Defendants deny that Plaintiffs have asserted any meritorious claim, deny
18 that the Solicitation Statement contained any misstatement or omission, and assert that no further
19 information is required to be provided;

20 WHEREAS, on April 5, 2017, Nimble Storage filed an amendment to the Solicitation
21 Statement that included certain additional information relating to the Transaction that addressed
22 and mooted claims regarding the sufficiency of the disclosures in the Solicitation Statement as
23 alleged in the Actions (the “Supplemental Disclosures”);

24 WHEREAS, Plaintiff Parshall’s counsel believes they may assert a claim for a fee in
25 connection with the prosecution of the Parshall Action and the issuance of the Supplemental
26 Disclosures, and have informed Defendants of their intention to petition the Court for such a fee
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1 if their claim cannot be resolved through negotiations between counsel for Plaintiffs in the
2 Actions and Defendants (the “Fee Application”);

3 WHEREAS, for the sake of judicial economy and the convenience of all parties, Plaintiff
4 Parshall’s counsel has coordinated with Plaintiff Huston’s counsel and Plaintiff’s Ettel’s counsel,
5 and Plaintiffs’ counsel in all three actions intend to file any Fee Application jointly in the Huston
6 Action;

7 WHEREAS, all of the Defendants in the Action reserve all rights, arguments and
8 defenses, including the right to oppose any potential Fee Application and the right to dispute
9 which Court should address any Fee Application;

10 WHEREAS, no class has been certified in the Actions;

11 WHEREAS, for the avoidance of doubt, no compensation in any form has passed directly
12 or indirectly to Plaintiff Parshall or his attorneys and no promise, understanding, or agreement to
13 give any such compensation has been made, nor have the parties had any discussions concerning
14 the amount of any mootness fee application or award;

15 NOW, THEREFORE, upon consent of the parties and subject to the approval of the
16 Court:

17 IT IS HEREBY ORDERED that:

18 1. The Parshall Action is dismissed, and all claims asserted therein are dismissed
19 with prejudice as to Plaintiff only. All claims on behalf of the putative class are dismissed
20 without prejudice.

21 2. Because the dismissal is with prejudice as to Plaintiff only, and not on behalf of a
22 putative class, notice of this dismissal is not required.

23 3. If a Fee Application becomes necessary, Plaintiff Parshall’s counsel may seek a
24 fee by joining in the Fee Application to be filed in the Huston Action where the Court will retain
25 jurisdiction, as appropriate, for the Fee Application.

26 4. This Stipulation, and any Order thereon, are made without prejudice to any right,
27 position, claim or defense any party may assert with respect to the Fee Application, which
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1 includes the Defendants' right to oppose the Fee Application and the right to dispute which
2 Court should address any Fee Application.

3 Dated: April 26, 2017

Respectfully submitted,

4 **LEVI & KORSINSKY LLP**

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*Attorneys for Defendant Nimble Storage Inc.
and the Individual Defendants*

17 **WACHTELL, LIPTON, ROSEN & KATZ**

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*Attorneys for Hewlett Packard Enterprise
Company, and Nebraska Merger Sub, Inc.*

23 **FILER'S ATTESTATION**

24 Pursuant to Civil Local Rule 5-1 regarding signatures, I attest under penalty of perjury
25 that the concurrence in the filing of this document has been obtained from all signatories.

26 /s/ Rosemary M. Rivas
27 Rosemary M. Rivas

