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14 ATTORNEYS FOR DEFENDANT
 F5 NETWORKS, INC.

15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17 SAN JOSE DIVISION

18 RADWARE, LTD., an Israeli company;
 RADWARE, INC., a New Jersey
 19 corporation,

Plaintiffs,

20 v.

21 F5 NETWORKS, INC., a Washington
 corporation,

22 Defendant.

23 F5 NETWORKS, INC., a Washington
 corporation,

24 Defendant.

Counterclaim-Plaintiff,

25 v.

26 RADWARE, LTD., an Israeli company;
 RADWARE, INC., a New Jersey
 27 corporation,

28 Counterclaim-Defendants.

CASE NO. 5:13-CV-02024 RMW

Related Case 5:13-CV-02021 RMW

Assigned to the Hon. Ronald M. Whyte

**STIPULATED ORDER RE: DISCOVERY
 OF ELECTRONICALLY STORED
 INFORMATION**

1 Plaintiffs Radware, Ltd. and Radware, Inc. (“Plaintiffs” or “Radware”) and Defendants F5
2 Networks, Inc. (“Defendant” or “F5”) (collectively “the Parties”) hereby stipulate as follows:

3 **A. PURPOSE**

4 This Order will govern discovery of electronically stored information (“ESI”) in this case
5 as a supplement to the Federal Rules of Civil Procedure, this Court’s Guidelines for the
6 Discovery of Electronically Stored Information, and any other applicable orders and rules.

7 **B. COOPERATION**

8 The parties are aware of the importance the Court places on cooperation and commit to
9 cooperate in good faith throughout the matter consistent with this Court’s Guidelines for the
10 Discovery of ESI.

11 **C. LIAISON**

12 Each Party agrees to designate an ESI Liaison who are and will be knowledgeable about
13 and responsible for discussing their respective ESI. Each ESI liaison will be, or have access to
14 those who are, knowledgeable about the technical aspects of e-discovery, including the location,
15 nature, accessibility, format, collection, search methodologies, and production of ESI in this
16 matter. The parties will rely on the ESI liaisons, as needed, to confer about ESI and to help
17 resolve disputes without court intervention. Any Party is free to change their designated ESI
18 Liaison by providing written notice to the other Party.

19 **D. PRESERVATION**

20 The parties have discussed their preservation obligations and needs and agree that
21 preservation of potentially relevant ESI will be reasonable and proportionate. To reduce the
22 costs and burdens of preservation and to ensure proper ESI is preserved, the parties agree that:

23 1) Absent a showing of good cause by the requesting party, the parties shall not be
24 required to modify, on a going-forward basis, the procedures used by them in the ordinary course
25 of business to back up and archive data; provided, however, that the parties shall preserve the
26 non-duplicative discoverable information currently in their possession, custody or control;

27 2) The parties will agree on the number of custodians per party for whom ESI will be
28 preserved;

1 3) These data sources are not reasonably accessible because of undue burden or cost
2 pursuant to Fed. R. Civ. P. 26(b)(2)(B), the parties agree not to preserve the following:

- 3 a) automatically saved versions of documents;
- 4 b) instant messaging, text messaging, SMS communications, telephonic
5 recordings, voicemail, or other digitally recorded conversations;
- 6 c) system or executable files (.exe, .dll, etc.);
- 7 d) audio, video, or audio-visual information (e.g., .wav, .mp3, .avi, .swf,
8 etc.), unless the information is known to be related to the claims asserted
9 in this case (e.g., training videos for product features accused of
10 infringement) or the responsiveness of specific files is made known to
11 counsel during search, review, collection, or production of other
12 responsive information;
- 13 e) unreadable or corrupt files;
- 14 f) data from Blackberry™, tablets or other portable and smartphone devices
15 where the Producing Party believes based on its standard practices that
16 the information contained therein is expected to be duplicative of other
17 sources (e.g., other email systems);
- 18 g) materials retained primarily for backup or disaster recovery purposes, for
19 example materials retained in tape, floppy disk, optical disk, or similar
20 formats, and temporary data stored in a computer's random access
21 memory or RAM;
- 22 h) systems no longer in use or systems that cannot be accessed; and
- 23 i) any other file types subsequently agreed by the Parties.

24 4) If responsive documents are located on a centralized server or network, the
25 producing party shall not be required to search for additional copies of such responsive
26 documents that may be located on the personal computer, or otherwise in the possession, of
27 individual employees except upon request for specific documents by opposing counsel with a
28 showing that such additional collection is justified (i.e., likely benefit outweighed by burden and
expense) and a meet and confer between respective ESI liaisons.

 5) In addition to the agreements above, the parties agree data from these sources (a)
could contain relevant information, but (b) under the proportionality factors, should not be
preserved: the parties reserve the right to identify further categories of documents that are unduly

1 burdensome to collect and/or produce.

2 **E. E-MAIL**

3 Email production requests shall only be propounded for specific issues, rather than
4 general discovery of a product of business. Email production requests shall be phased to occur
5 after Radware has served its Disclosure of Asserted Claims and Infringement Contentions and
6 accompanying disclosures under Patent Local Rules 3-1 and 3-2. The parties agree that disputes
7 regarding entitlements or limits to email production from particular custodians should be
8 governed by the Federal Rules of Civil Procedure, including Rule 26 and associated case law.

9 1) General ESI production requests under Federal Rules of Civil Procedure 34 and 45
10 shall not include email or other forms of electronic correspondence (collectively “email”). To
11 obtain email, parties must propound specific email production requests. Email production
12 requests shall identify the custodian (by name, if possible, or by job description/title, or by
13 knowledge of issues), search terms, and time frame. The parties shall cooperate to identify the
14 proper custodians, proper search terms, and proper timeframe.

15 2) Each requesting party shall limit its email production requests to a total of ten
16 search terms per custodian per party. A “search term” will be considered to include all
17 permutations, abbreviations, and alternatives meaning the same thing and will count as a single
18 term. For example, a search term for a product name will include the product’s name, all
19 company-internal monikers, nicknames and code names including abbreviations thereof. The
20 parties may jointly agree to modify this limit without the Court’s leave. The Court shall consider
21 contested requests for additional search terms per custodian, upon showing a distinct need based
22 on the size, complexity, and issues of this specific case. Should a party serve email production
23 requests for additional search terms beyond the limits agreed to by the parties or granted by the
24 Court pursuant to this paragraph, the requesting party shall bear all reasonable costs caused by
25 such additional discovery.

26 3) Search terms shall be narrowly tailored to particular issues. Indiscriminate terms,
27 such as the producing company’s name or its product name, are inappropriate unless combined
28 with narrowing search criteria that sufficiently reduce the risk of overproduction. A conjunctive

1 combination of multiple words or phrases (*e.g.*, “computer” and “system,” “computer” w/x
2 “system,” “computer” but not “system”) narrows the search and shall count as a single search
3 term. A disjunctive combination of multiple words or phrases (*e.g.*, “computer” or “system”)
4 broadens the search and thus each word or phrase shall count as a separate search term unless
5 they are variations of the same word. Use of narrowing search criteria (*e.g.*, “and,” “but not,”
6 “w/x”) is encouraged to limit the production and shall be considered when determining whether
7 to shift costs for disproportionate discovery. Should a party serve email production requests with
8 search terms beyond the limits agreed to by the parties or granted by the Court pursuant to this
9 paragraph, the producing party may decline to respond or request that the producing party bear all
10 costs caused by such additional discovery.

11 4) If a producing party determines, either upon receipt or thereafter, that one or more
12 proposed search terms results or will likely result in an unduly burdensome quantity of excessive
13 or irrelevant information (“false hits”), the producing party shall promptly contact the requesting
14 party to request a reassessment of the proposed search term(s), and the parties shall meet and
15 confer in good faith to attempt to resolve such dispute.

16 **F. PRODUCTION FORMAT**

17 Documents shall be produced in the following folder structure.

- 18 1) **Top-level folder.** This folder will indicate the production volume (*e.g.*, ABC-001).
- 19 2) **Images Folder.** Documents shall be produced in single page, black & white, TIFF
20 image format (Group 4, 300 dpi), and to the extent necessary to understand the
21 information presented therein, with color images produced in .jpeg format. Each
22 image will be sequentially stamped with a unique Bates number. Images shall be
23 placed in sub-folders where each sub-folder shall not contain more than 1,000
24 images. Embedded objects, such as email logos, shall be delivered as part of the
25 record absent party agreement to the contrary.
- 26 3) **Natives Folder.** Excel spreadsheets and audio-video files shall be produced in
27 native file format; the parties agree to meet and confer regarding the native
28 production of other file types (*e.g.*, databases or files requiring specialized
software) as appropriate.
- 4) **Text Folder.** Extracted text or OCR text generated to render documents
searchable shall be produced at the document level. Text files shall be labeled to
correspond with the Bates number of the first image file for each document. If
documents are redacted, OCR text shall be provided for the unredacted text.
- 5) **Load Files.** Concordance .DAT data load files containing the metadata fields

1 listed in Schedules A and B (to the extent such metadata fields or data for such
2 fields are reasonably available), and iPRO-ready .LFP and .OPT image load files
shall accompany the image, native and text files.

3 6) **Hard Copy Documents.** Paper documents shall be scanned and delivered in
4 accordance with the foregoing format specifications.

5 7) **De-Duplication.** Parties agree to globally de-duplicate files prior to production.

6 **G. DOCUMENTS PROTECTED FROM DISCOVERY**

7 1) Pursuant to Fed. R. Evid. 502(d), the production of a privileged or work-product-
8 protected document, whether inadvertent or otherwise, is not a waiver of privilege or protection
9 from discovery in this case or in any other federal or state proceeding. For example, the mere
10 production of privilege or work-product-protected documents in this case as part of a mass
11 production is not itself a waiver in this case or in any other federal or state proceeding.

12 2) In the event of inadvertent disclosure, the receiving party shall not use the content
13 of ESI that the producing party asserts is protected by any applicable privilege or doctrine, or the
14 fact of inadvertent production, to challenge the protection asserted. Further, the receiving party
15 shall immediately return or confirm in writing that it has destroyed all information that contains
16 privileged matter or work product that appears on its face to have been inadvertently produced or,
17 if notice is provided, within fifteen (15) calendar days of the date of the notice.

18 3) Communications involving trial counsel that post-date the filing of the complaint
19 need not be placed on a privilege log. Communications may be identified on a privilege log by
20 category, rather than individually, if appropriate. For each document withheld or redacted, the
21 Privilege Log shall contain the following information: (i) the date of the document; (ii) the
22 identity of all persons who authored, signed or otherwise prepared the document; (iii) the identity
23 of all persons designated as addressees or copyees, including blind copyees; (iv) a description of
24 the contents of the document that, without revealing information itself privileged or protected, is
25 sufficient to understand the subject matter of the document and the basis of the claim of privilege
26 or immunity; (vi) the type or nature of the privilege asserted (*e.g.*, attorney-client privilege, work
27 product doctrine, common interest, etc.); (vii) the unique document number assigned to the
28 withheld document; and (viii) the Bates numbers corresponding to the first and last page of any

1 redacted document, if the document has been assigned any such Bates numbers. Any email
2 message (whether produced individually or as part of a series or chain of emails linked together
3 by email responses and forwarding) that is withheld or redacted on the grounds of privilege,
4 immunity or any similar claim shall be logged as one document and shall be identified by the top-
5 most email in the thread that is withheld or redacted (*e.g.*, if a party withholds on the basis of
6 privilege an email thread consisting of a sent email, a first reply email and a second reply email,
7 the thread shall be identified by the second reply email; if a party produces the same email thread
8 but redacts the sent email and the first reply email, the thread shall be identified by the first reply
9 email). The parties shall not be required to log identical copies of an email that is included in a
10 thread that has been logged in accordance with this Paragraph. The parties hereby agree to
11 exchange initial privilege logs by no later than six weeks after the document production to which
12 each log relates. At this time, the parties need not log privileged communications or work
13 product created in connection with the prior litigation identified as Case No. 04-3376 (D. N.J.)
14 and Case No. 10-654MJP (W.D. Wash) between Radware and its legal counsel, and between F5
15 and its legal counsel. Parties, however, reserve the right to request privilege logs upon meeting
16 and conferring should a specific issue arise.

17 4) Testifying experts shall not be subject to discovery on any draft of their reports in
18 this action and such draft reports, notes, or outlines for draft reports are also exempt from
19 production and discovery pursuant to Fed. R. Civ. P. 26(b)(4)(C) and (D). Materials,
20 communications, and other information exempt from discovery under this paragraph shall be
21 treated as attorney work product for the purposes of this action.

22 **H. COST-SHIFTING**

23 Costs may be shifted for disproportionate ESI production requests pursuant to Federal
24 Rule of Civil Procedure 26. Likewise, a party's nonresponsive or dilatory discovery tactics will
25 be subject to cost-shifting considerations. A party's meaningful compliance with this Order and
26 efforts to promote efficiency and reduce costs will be considered in cost-shifting
27 determinations.

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I. MANNER OF SERVICE

The parties will serve all documents related to this Litigation by 11:59 PM Pacific Time on the day of service, and such service shall constitute timely service on that day. Service may be made by electronic mail to counsel of record (identified below), with the filed, submitted, or produced documents attached in .pdf format. When the size of the file containing any such document(s) are too large for service by electronic mail, service may be made by hand delivery or by Federal Express (or similar means) for next day delivery, and a CD, diskette, .ftp site or other means of electronically providing the documents being served shall be provided. Where service is made by next day delivery, service shall be effective on the day sent. The Parties may electronically serve large documents via an FTP site in accordance with the same rules applicable to e-mail.

All discovery requests shall be served by electronic means in .pdf format accompanied by a Word version for use by the receiving party. All responses and objections thereto (but not necessarily documents produced pursuant to any such request) shall be served by electronic mail in a searchable .pdf format.

All such electronic service under this agreement will be effective as if service had been accomplished by hand delivery, *i.e.*, 3 days will not be added under the Federal Rules or any local rule. The parties designate the following counsel to receive documents pursuant to this stipulation:

Party	Service by E-mail	Service by Hand
Radware	F5-RadwareService@mwe.com	Fabio Marino MCDERMOTT WILL & EMERY 275 Middlefield Road, Suite 100 Menlo Park, CA 94025-4004

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F5 Networks	RAlsalam@perkinscoie.com NDurance@perkinscoie.com LThomas@perkinscoie.com	Ramsey M. Al-Salam Nathaniel E. Durance PERKINS COIE LLP 1201 Third Street, Ste. 4800 Seattle, WA 98101-3099
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J. MODIFICATION

This Stipulated Order may be modified by a Stipulated Order of the parties or by the Court for good cause shown.

Schedule A: Production Fields for ESI

Field Name (variations of the names below may be used)	Description
Volume	The Production Volume.
Beg Bates	Number endorsed on first page of document.
End Bates	Number endorsed on last page of document.
Page Count	Total number of pages in document.
Beg Attach	Number endorsed on first page of first document in a family (<i>i.e.</i> , documents and all attachments thereto).
End Attach	Number endorsed on last page of last document in a family (<i>i.e.</i> , documents and all attachments thereto).
Confidential Designation	The confidential designation endorsed on the document. If no designation is present, a default value of “None” will be coded.
Authors(s)	If available, the person(s) who created, wrote, reviewed, signed, or approved the document. If no author is present, a default value of “None” will be coded.
FROM	Sender of email message.
TO	Recipient of email message in the “To” field.
CC	Recipient of email message in the “CC” field.
BCC	Recipient of email message in the “BCC” field.
Title / Subject	If available, verbatim subject or re: line, or discernible document title appearing on the document’s first page.

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Field Name (variations of the names below may be used)	Description
Date Created	If available, the date the document was created.
Date Modified	If available, the date the document was last modified.
Sent Date	Date email message was sent.
Received Date	Date email message was received.
Source(s)	Custodial or Non-custodial source(s) from which the document was collected.
File Name	Original file name.
Document Type	The file extension describing the type of document (<i>e.g.</i> , Microsoft Word document).
FullText	Relative path to text file containing extracted text or OCR text on Production Media.
Native Path	Relative path to native file on Production Media.
MD5 Hash Value	The MD5 hash of the native produced file, not the produced TIFF files.

Schedule B: Production Fields for Paper Discovery

Field Name (variations of the names below may be used)	Description
Volume	The Production Volume.
Beg Bates	Number endorsed on first page of document.
End Bates	Number endorsed on last page of document.
Page Count	Total number of pages in document.
Beg Attach	Number endorsed on first page of first document in a family (<i>i.e.</i> , documents and all attachments thereto).
End Attach	Number endorsed on last page of last document in a family (<i>i.e.</i> , documents and all attachments thereto).
Confidential Designation	The confidential designation endorsed on the document. If no designation is present, a default value of “None” will be coded.

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Field Name (variations of the names below may be used)	Description
Source(s)	Custodial or Non-custodial source(s) from which the document was collected.

IT IS SO STIPULATED, through Counsel of Record.

Dated: September 5, 2013

Respectfully submitted,
McDERMOTT WILL & EMERY LLP

By: /s/ Fabio E. Marino
Fabio E. Marino

Attorneys for Plaintiffs
RADWARE, LTD. and RADWARE, INC.

Dated: September 5, 2013

Respectfully submitted,
PERKINS COIE LLP

By: /s/ Christopher Kao
Christopher Kao

Attorneys for Defendant
F5 NETWORKS, INC.

SIGNATURE ATTESTATION

Pursuant to Civil L.R. 5.1, I hereby attest that I have obtained the concurrence in the filing of this document from all the signatories for whom a signature is indicated by a “conformed” signature (/s/) within this e-filed document and I have on file records to support this concurrence for subsequent production for the Court if so ordered or for inspection upon request.

Dated: September 5, 2013

/s/ Fabio E. Marino
Fabio E. Marino

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[] ORDER

PURSUANT TO STIPULATION OF THE PARTIES, IT IS SO ORDERED.

DATED: _____



THE HONORABLE RONALD M. WHYTE
UNITED STATES SENIOR DISTRICT JUDGE