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15
16 **UNITED STATES DISTRICT COURT**
17 **NORTHERN DISTRICT OF CALIFORNIA**

18
19 UNITED STATES OF AMERICA,

Plaintiff

v.

21
22 HEWLETT PACKARD ENTERPRISE CO.
23 and JUNIPER NETWORKS, INC.,

Defendants.

Case No. 25-cv-00951-PCP

**[JOINT PROPOSED] CASE
MANAGEMENT PLAN**

1 Plaintiff United States of America and Defendants Hewlett Packard Enterprise Co.
2 (“HPE”) and Juniper Networks, Inc. (“Juniper”), jointly submit this Joint Proposed Case
3 Management Plan pursuant to the Standing Order for All Judges of the Northern District of
4 California and Civil Local Rule 16-9, and the Court’s order at the Case Management Conference
5 on February 28, 2025.

6 **I. Disclosures**

7 The Parties agree to waive the exchange of initial disclosures under Federal Rule of Civil
8 Procedure 26(a)(1) and instead will exchange preliminary trial fact witness lists as provided in
9 the schedule entered by the Court.

10 **II. Proposed Discovery Plan**

11 The Parties agree on the following proposed discovery plan:

12 **A. Definitions**

13 For the purpose of this Order, “Party” means the Antitrust Division of the U.S.
14 Department of Justice, HPE, and Juniper.

15 **B. Discovery of Confidential or Highly Confidential Information**

16 Discovery and production of Confidential or Highly Confidential information will be
17 governed by the Protective Order entered by the Court in this action. When sending discovery
18 requests, notices, and subpoenas to non-parties, the Parties must include copies of any Protective
19 Orders then in effect.

20 **C. Timely Service of Fact Discovery**

21 All discovery, including discovery served on non-parties, must be served in time to
22 permit completion of responses by the close of fact discovery.

23 **D. Subpoenas to Non-Parties**

24 The Parties will in good faith cooperate with each other with regard to any discovery to
25 non-parties in an effort to minimize the burden on non-parties. Each Party must serve a copy of

1 any subpoena to a non-party on the other Parties at or before the time the subpoena is served on
2 the non-party. The Parties agree to accept electronic service (by email) of a notice and copy of
3 the subpoena. Every subpoena to a non-party shall include a cover letter requesting that: (a) the
4 non-party stamp each document with a production number prior to producing it; (b) the non-
5 party stamp any applicable confidentiality designation prior to producing it; and (c) the non-party
6 provide to the other Parties copies of all productions at the same time as they are produced to the
7 requesting Party. To facilitate cooperation, a requesting Party will produce to all other Parties a
8 written record of any oral modifications to the subpoena and (unless already copied) all
9 substantive written communications concerning non-party subpoenas within 5 business days of
10 the oral or written communication, including objections, responses, agreements on extensions or
11 limitations, and accounts of productions received from non-parties.

12 If a non-party fails to provide copies of productions to the other side, the requesting Party
13 shall provide copies to the other Party, in the format the productions were received, within 5
14 business days after receipt of such materials from the non-party. In addition, if a non-party
15 produces documents or electronically stored information that are not Bates-stamped, the Party
16 receiving those materials will Bates-stamp such documents or electronically stored information
17 and produce such Bates-stamped copies to all Parties simultaneously within a timeframe
18 appropriate to the volume and complexity of the materials received. Production of the Bates-
19 stamped copies should not delay production of the non-Bates stamped versions to all Parties as
20 required in the first sentence of this paragraph.

21 **E. Written Discovery on Parties**

22 **1. Document Requests**

23 There is no pre-determined limit on the number of requests for the production of
24 documents that may be served by the Parties, but any requests must be proportional to the needs
25 of the case as required by Federal Rule of Civil Procedure 26(b)(1).

1 The Parties must serve any objections to requests for productions of documents within 7
2 business days after the requests are served. Within 3 business days of service of any objections,
3 the Parties must meet and confer to attempt to resolve any objections and to agree on search
4 terms and custodians to be searched. The Parties must make good-faith efforts to make rolling
5 productions of responsive documents (to the extent not subject to any objections, search terms
6 negotiations, or custodian issues that have not been resolved), including any portion(s) of
7 responsive productions that are not subject to any objections or negotiations concerning the
8 method of production or custodians, beginning no later than 21 days after service of the request
9 for production. The Parties must make good-faith efforts to substantially complete responsive
10 productions no later than 28 days after service of the request for production. Should any
11 objections or negotiations concerning the method of production or custodians remain unresolved
12 for 14 days or more after service of the request for production, the Parties must make good-faith
13 efforts to complete such remaining responsive productions no later than 14 days after resolution
14 of such objections or negotiations.

15 **2. Interrogatories**

16 Interrogatories are limited to 12 (including discrete subparts) to Defendants collectively
17 by the United States and to 12 (including discrete subparts) to the United States collectively by
18 Defendants. The Parties must serve any objections to interrogatories within 7 business days after
19 the interrogatories are served. Within 3 business days of service of any objections, the Parties
20 must meet and confer to attempt to resolve the objections. The Parties must make good-faith
21 efforts to provide complete answers to interrogatories no later than 28 days after service of the
22 interrogatories.

23 **3. Requests for Admission**

24 Requests for admission are limited to 20 by the United States to Defendants collectively
25 and to 20 by Defendants collectively to the United States. Unless otherwise agreed, the Parties

1 must make good faith efforts to respond in writing to requests for admissions no later than 28
2 days after service of the requests.

3 **F. Depositions**

4 The United States is limited to 25 depositions of fact witnesses, and the Defendants
5 collectively are limited to 25 depositions of fact witnesses. Depositions of a Party or third-party
6 organization may be taken by either Party under Federal Rule of Civil Procedure 30(b)(6) and
7 will count against the 25-deposition maximum. The United States may issue no more than one
8 (1) deposition notice under Rule 30(b)(6) to each Defendant (two total). Each seven-hour
9 deposition of a Party taken under Federal Rule of Civil Procedure 30(b)(6) counts as one
10 deposition for purposes of the side's limit, regardless of the number of witnesses produced to
11 testify on the matters for examination in that deposition. For the avoidance of doubt, every non-
12 party deposition taken under Federal Rule of Civil Procedure 30(b)(6) counts as one deposition
13 for purposes of the side's limit, regardless of whether the full seven hours afforded under Federal
14 Rule of Civil Procedure 30(d)(1) are used. Where a witness testifying on behalf of a Defendant
15 under Rule 30(b)(6) has also been noticed as a fact witness, the Parties shall confer regarding
16 whether it is reasonable to take both depositions on the same day or on consecutive business
17 days. The following depositions do not count against the deposition caps imposed in this
18 Paragraph: (a) depositions of any persons identified on a Party's final fact witness list who were
19 not identified on that Party's preliminary fact witness list; (b) depositions of the Parties'
20 designated expert witnesses; (c) depositions taken in response to Civil Investigative Demands
21 prior to January 30, 2025; (d) the 2-hours of deposition time afforded to non-noticing Parties in
22 non-party depositions; (e) depositions taken for the sole purpose of establishing the location,
23 authenticity, or admissibility of documents produced by any Party or non-party, provided that
24 such depositions may be noticed only after the Party taking the deposition has taken reasonable
25 steps to establish location, authenticity, or admissibility through other means, and further

1 provided that such depositions must be designated at the time that they are noticed as being taken
2 for the sole purpose of establishing the location, authenticity, or admissibility of documents; or
3 (f) depositions of a non-party (including an employee of a non-party) to or with which a
4 Defendant has made an offer, commitment, or agreement (including an agreement to divest or
5 license assets) to attempt to address the United States' concerns about the Planned Transaction.

6 The Parties will use reasonable efforts to reduce the burden on witnesses (including
7 experts) noticed for depositions and to accommodate the witnesses' schedules. Absent
8 extraordinary circumstances, the Parties and non-parties will consult in advance to schedule
9 depositions at mutually convenient times and places. Parties will make reasonable efforts to
10 make witnesses (including experts) available for deposition promptly upon notice. The Parties
11 will meet and confer in good faith regarding whether a deposition will be conducted virtually or
12 in-person. Depositions that are conducted in-person will take place in the locations where
13 witnesses reside or are employed, unless the noticing Party or Parties and the witness mutually
14 agree otherwise, subject to Paragraph III.E of this Order. For any Party or non-party deposition
15 conducted virtually by agreement of the Parties or Court order, the deposition will take place by
16 videoconference. The court reporter will swear in the witness remotely by means of the
17 videoconference. No participants other than the court reporter, and videographer if applicable,
18 will record the deposition.

19 If a Party serves on a non-party a subpoena for production of documents or electronically
20 stored information and a subpoena commanding attendance at a deposition, the Party serving
21 those subpoenas must schedule the deposition for a date at least 7 business days after the return
22 date for the document subpoena, unless all other Parties consent to fewer than 7 business days.
23 In the event the Party serving the subpoenas agrees to extend the date of production for the
24 document subpoena in a way that would result in fewer than 7 business days between the
25 extended production date and the date scheduled for that non-party's deposition, the date

1 scheduled for the deposition must be postponed to be at least 7 business days following the
2 extended production date, unless all other Parties consent to fewer than 7 business days. In the
3 event that an opposing Party serves a separate subpoena on the same non-party and causes the
4 date of production for that second document subpoena to result in fewer than 3 business days
5 between that production date and the date scheduled for that non-party's deposition, the
6 originally noticing Party may at its sole discretion postpone the date scheduled for the deposition
7 for up to 3 business days following the second production date.

8 Depositions of fact witnesses are limited to no more than one (7-hour) day unless
9 otherwise stipulated. A Defendant noticing a deposition may cede some or all of its examination
10 time to another Defendant. During non-party depositions, the non-noticing side will receive at
11 least two hours of examination time. If a non-party deposition is noticed by both sides, then time
12 will be divided equally between the sides (i.e., 3.5 hours to Plaintiff and 3.5 hours collectively to
13 Defendants). Any time allotted to one side not used by that side in a non-party deposition may
14 not be used by the other side absent agreement from both sides.

15 Any Party may further depose any person whose deposition was taken pursuant to a Civil
16 Investigative Demand, and the fact that such person's deposition was taken pursuant to a Civil
17 Investigative Demand may not be used as a basis for any Party to object to that person's
18 deposition. Depositions taken of non-party witnesses pursuant to Civil Investigative Demands
19 may not be used at trial except for impeachment subject to the Federal Rules of Civil Procedure
20 and Federal Rules of Evidence.

21 Any objection made by any Party in a deposition preserves that objection for every Party.

22 Notwithstanding any other part of this Paragraph, the Parties reserve their right to move
23 for a protective order pursuant to Federal Rule of Civil Procedure 26(c)(1). The parties reserve
24 the right to seek from the Court additional deposition time with particular witnesses or a different
25 allocation of time than the allocations that are set forth within this Paragraph.

1 **G. Presumptions of Authenticity**

2 Documents and data produced by Parties and non-parties from their own files will be
3 presumed to be authentic within the meaning of Federal Rule of Evidence 901. Any good-faith
4 objection to authenticity must be provided with the exchange of other objections to intended trial
5 exhibits. If the opposing side serves a specific good-faith written objection to authenticity, the
6 presumption of authenticity will no longer apply and the Parties will promptly meet and confer to
7 attempt to resolve any objection.

8 Notwithstanding any other deadlines in this Order, a Party may take limited discovery
9 related to the authenticity of any document on that Party's exhibit list to which the opposing side
10 objects on the ground that such document is inauthentic.

11 **H. Expert Witness Disclosures and Depositions.**

12 Expert disclosures, including each side's expert reports, must comply with the
13 requirements of Federal Rule of Civil Procedure 26(a)(2) and 26(b)(4), except as modified by
14 this Paragraph.

15 1. Neither side must preserve or disclose, including in expert deposition testimony or
16 at trial, the following documents or information:

17 a. Any form of oral or written communications, correspondence, or work
18 product not relied upon by the expert in forming any opinions in their final
19 report shared between:

- 20 i. the expert and any persons assisting the expert;
- 21 ii. any Party's counsel and its expert(s), or between any agent or
22 employee of any Party's counsel and the Party's expert(s);
- 23 iii. testifying and non-testifying experts and their own staff;
- 24 iv. non-testifying experts;
- 25 v. testifying experts; or

1 vi. staff assisting testifying or non-testifying experts on the same side.

2 b. The expert’s notes, except for notes taken by or reviewed by an expert of
3 an interview upon which the expert relied in forming any opinions in their
4 final report;

5 c. Drafts of expert reports, affidavits, or declarations;

6 d. Data formulations, data runs, data analyses, or any database-related
7 operations not relied upon by the expert in forming any opinions in their
8 final report; and

9 e. Budgets, invoices, bills, receipts, or time records concerning testifying or
10 non-testifying experts, their staff, assistants, colleagues, or associates, or
11 their companies or organizations. Notwithstanding this provision, any
12 Party may inquire into a testifying expert’s compensation in this matter,
13 including the testifying expert’s hourly rates as well as the hourly or other
14 rates charged by firms and personnel supporting the expert, the total hours
15 spent by the testifying expert and staff members in connection with this
16 case, and any other payments or consideration received by the testifying
17 expert or any firm or agents supporting the expert relating to work in the
18 case.

19 Notwithstanding the limitations contained in the paragraph immediately
20 above, an expert may be asked at a deposition or trial: (a) to identify and generally
21 describe what data, facts, algorithms, modeling, regression analyses and source
22 code the expert reviewed, investigated or considered but did not rely on or
23 otherwise use, and (b) to describe the reasons for reviewing—but not using or
24 relying on—any such data, facts, algorithms, modeling, analyses or source code.

- 1 2. Testifying expert reports and declarations shall be served via email whenever
2 possible. If the files are too large, the Parties shall serve using a secure file
3 transfer, including ShareFile. Expert reports will include a list of all documents
4 (by Bates number), deposition testimony, data, articles, websites, and other
5 sources relied upon by the testifying expert(s) in forming any opinions in their
6 final reports, including Bates numbers of documents previously produced.
- 7 3. The Parties agree that the following materials will be disclosed using a secure file
8 transfer, including ShareFile, one calendar day after the reports are served:
- 9 a. Copies of all materials relied upon by the expert in forming any opinions
10 in their report that were not previously produced and that are not readily
11 available publicly;
- 12 b. A list of all publications authored by the expert in the previous 10 years;
- 13 c. Copies of all publications authored by the expert in the previous 10 years
14 that are not readily available publicly;
- 15 d. A list of all other cases in which, during the previous 4 years, the expert
16 testified at trial or by deposition, including tribunal and case number;
- 17 e. For all calculations appearing in the final report(s), all data and programs
18 underlying the calculations, including all programs and codes necessary to
19 replicate the calculations from the initial (“raw”) data files, and the
20 intermediate working-data files that are generated from the raw data files
21 and used in performing the calculations appearing in the final report and a
22 written explanation of why any observations in the raw data were either
23 excluded from the calculations or modified when used in the calculations
24 (“Backup Materials”). For clarity, raw data files are data that exist in the
25

1 ordinary course of business, and intermediate working-data files are data
2 assembled or processed for purposes of litigation; and

3 f. A statement of the compensation to be paid to the testifying expert for
4 their report and testimony in the case, which statement may appear in the
5 testifying expert's report.

6 Each expert will be deposed for only one 7-hour day, with all 7 hours reserved for the
7 side noticing the expert's deposition provided, however, that counsel for a Party may
8 additionally take reasonable and appropriate redirect examination of that Party's expert(s).

9 Depositions of each side's experts will be conducted only after disclosure of all expert reports
10 and all materials identified above for all that side's experts.

11 The Parties shall not serve subpoenas or discovery requests upon any testifying or non-
12 testifying expert. Instead, the Party proffering such testifying expert will: (a) be responsible for
13 producing all materials and information required under this Order or to the extent not addressed
14 in this Order, under the Federal Rules of Civil Procedure, for the testifying expert, and (b) upon
15 request, make the testifying expert available for deposition at a time mutually agreed to by the
16 Parties and consistent with the Court's scheduling orders.

17 **III. Other Matters**

18 **A. Witness Lists**

19 The United States is limited to 25 persons (excluding experts) on its preliminary trial fact
20 witness list, and the Defendants collectively are limited to 25 persons (excluding experts) on
21 their preliminary trial fact witness list. The preliminary trial fact witness lists must comply with
22 Federal Rule of Civil Procedure 26(a)(3)(A)(i)–(ii) and include the name, employer, address, and
23 telephone number of each witness, as well as counsel's contact information for third-party
24 witnesses. With respect to third parties for which depositions are not complete, such third parties
25 can be identified in a corporate capacity until the depositions take place.

1 The United States is limited to 25 persons (excluding experts) on its final trial fact
2 witness list, and the Defendants collectively are limited to 25 persons (excluding experts) on
3 their final trial witness list. Each side's final trial fact witness list may identify no more than 5
4 fact witnesses that were not identified on that side's preliminary trial fact witness list. Despite
5 the limitation on the number of depositions that each side may take, each side shall have the right
6 to depose any witness on the opposing side's final fact witness list if that witness has not already
7 been deposed in this litigation, even if the limitation on depositions is exceeded. The final trial
8 witness lists must comply with Federal Rule of Civil Procedure 26(a)(3)(A)(i)–(ii) and include
9 the name, employer, address, and telephone number of each witness, as well as counsel's contact
10 information for third-party witnesses.

11 Consistent with the schedule entered by the Court, the Parties will also exchange expert
12 witness lists. Each side's expert witness list will designate all experts that each side intends to
13 call at trial, along with a brief statement of the subject matter on which the expert will testify.

14 In preparing preliminary trial fact witness lists, final trial fact witness lists, and expert
15 witness lists the Parties must make good-faith attempts to identify the witnesses whom they
16 expect that they may present as live witnesses at trial (other than solely for impeachment). No
17 Party may offer into evidence at trial any portion of a person's deposition testimony unless that
18 person was identified on either Party's final trial witness list. No Party may call a person to
19 testify as a live witness at trial (other than solely for impeachment) unless that person was
20 identified on either Party's final trial witness list.

21 **B. Completion of Planned Transaction**

22 Defendants have agreed that they will not close, consummate, or otherwise complete the
23 Proposed Transaction until 12:01 a.m. on the 5th day following the entry of the judgment by the
24 Court in this matter, and only if the Court enters an appealable order that does not prohibit
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1 consummation of the transaction. For purposes of this Order, “Proposed Transaction” means the
2 proposed acquisition of Juniper by Hewlett-Packard Enterprise Company.

3 **C. Nationwide Service of Subpoenas**

4 To assist the Parties in planning discovery, and in view of the geographic dispersion of
5 potential witnesses in this action outside this District, the Parties are permitted, under 15 U.S.C.
6 § 23, to issue nationwide discovery and trial subpoenas from this Court. The availability of
7 nationwide service of process, however, does not make a witness who is otherwise “unavailable”
8 for purposes of Federal Rule of Civil Procedure 32 and Federal Rule of Evidence 804 available
9 under those rules or otherwise affect the admissibility at trial of a deposition of a witness.

10 **D. Service of Pleadings and Discovery on Other Parties**

11 Service of all pleadings, discovery requests (including subpoenas for testimony or
12 documents under Federal Rule of Civil Procedure 45), and delivery of all correspondence in this
13 matter, other than expert backup materials, must be made by ECF or email, except when the
14 volume of attachments requires delivery via secure file transfer, to the following individuals
15 designated by each Party:

16 **For Plaintiff the United States:**

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22 **For Defendant Juniper Networks, Inc.:**

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32 Service of expert backup materials will be made utilizing a secure file transfer system as
33 provided in Paragraph II.H.

34 This list of designated individuals may be modified by unilateral request of either Party.

35 For purposes of calculating discovery response times under the Federal Rules of Civil
36 Procedure, electronic delivery at the time the email was sent will be treated in the same manner
37 as hand delivery at that time. However, for any service other than service of court filings, email

1 service that is delivered after 9:00 p.m. Pacific Time will be treated as if it was served the
2 following business day.

3 **E. Evidence from a Foreign Country**

4 Before any Party may offer documentary or testimonial evidence from an entity or person
5 located in a foreign country, the other side must be afforded an opportunity by the entity or
6 person (or both, when applicable) to obtain documentary and deposition discovery. For any non-
7 party witness who resides outside the United States and is included on the witness lists of any
8 Party, any deposition of that witness may be conducted via remote means and any such
9 deposition may be conducted under United States law. For any Party witness who resides
10 outside the United States, is an executive of a Party, and is included on the witness lists of any
11 Party, that witness will be produced by the Party for a deposition under United States law.

12 Each Party agrees that its litigation counsel in this action will accept service of a
13 deposition notice on behalf of any witness who is an executive of a Party, the Party's subsidiary,
14 or an affiliate of the Party and who resides or is located outside the United States, without
15 requiring additional or different procedures to be followed pursuant to the Hague Evidence
16 Convention, or any other applicable convention, treaty, law, or rule. In addition, each Party
17 agrees to make each such witness available for either a remote deposition or an in-person
18 deposition in the United States at a location convenient for the individual and as agreed to by the
19 Parties.

20 For the avoidance of doubt, nothing in this provision precludes a Party from moving for a
21 protective order under the Federal Rules of Civil Procedure.

22 **F. Modification of Joint Case Management Plan**

23 Modifications of the rights and responsibilities of the Parties under this Order may be
24 made by mutual agreement of the Parties, provided any such modification has no effect on the
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1 schedule for pretrial filings or trial dates. Otherwise, any Party may seek modification of this
2 Order for good cause.

3
4 Dated: March 5, 2025

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18 Dated: March 5, 2025

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1 Dated: March 5, 2025

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9 PURSUANT TO STIPULATION, IT SO ORDERED.

10
11 Dated: _____

HONORABLE P. CASEY PITTS
United States District Judge

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ATTORNEY ATTESTATION

I, Julie Elmer, am the ECF user whose identification and password are being used to file the JOINT PROPOSED CASE MANAGEMENT PLAN. In compliance with Local Rule 5-1(i)(3), I hereby attest that all signatories hereto concur in this filing.

/s/ Julie Elmer