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20 UNITED STATES DISTRICT COURT
21 NORTHERN DISTRICT OF CALIFORNIA
22 SAN JOSE DIVISION

23 UNITED STATES OF AMERICA,

24 *Plaintiff*

25 v.

26 HEWLETT PACKARD ENTERPRISE CO.
27 and JUNIPER NETWORKS, INC.,

28 *Defendants.*

CASE NO. 5:25-cv-00951-PCP

**JOINT STATUS REPORT
REGARDING CASE
MANAGEMENT STATEMENT**

Judge: P. Casey Pitts
Action Filed: January 30, 2025

1 Pursuant to the Court’s February 14, 2025 Order, Plaintiff United States of America, Defendant
2 Hewlett Packard Enterprise Co. (“HPE”), and Defendant Juniper Networks, Inc. (“Juniper”), hereinafter
3 jointly referred to as the Parties, submit this joint status report regarding the Joint Case Management
4 Statement and Proposed Order, ECF No. 80. *See* Minute Entry, ECF No. 55. The Parties provide a status
5 update below and then address two issues below: the trial schedule and a modification to their agreement
6 as to who may be called as a witness at trial.

7 **I. Status**

8 The Parties have continued to meet and confer on a range of case management issues following
9 the February 14, 2025 status conference. On February 21, 2025, the Parties filed a Joint Case Management
10 Statement, pursuant to the Court’s February 14, 2025 Order. ECF No. 80. The same day, the Parties filed
11 a proposed stipulated order governing discovery of electronically stored information (“ESI Protocol”).
12 ECF No. 79. The Court entered the ESI Protocol on February 24, 2025. ECF No. 81.

13 The Parties have begun issuing discovery requests. On February 14, 2025, the Parties served their
14 First Requests for Production of Documents. On February 18, 2025, Defendants served their Second
15 Requests for Production of Documents and First Set of Interrogatories. On February 21 and February 25,
16 2025, Plaintiff served their Second and Third Requests for Production of Documents. On February 26,
17 2025, the Parties served their Responses and Objections to each other’s First Requests for Production of
18 Documents.

19 Following entry of a Stipulated Protective Order, ECF No. 49, Plaintiff produced a copy of its
20 investigation file to Defendants on February 20, 2025.

21 **II. Trial Schedule**

22 Since the filing of the Complaint in this case, Parties have collaborated and reached agreement on
23 many preliminary matters, including the terms of the Protective Order and ESI Protocol, but continue to
24 disagree on an appropriate trial schedule. Plaintiff originally proposed trial commence on October 27 and
25 Defendants originally proposed trial commence on June 16, 2025. ECF No 47, Ex. C. Plaintiff then offered
26 a compromise September 8, 2025, trial date, which Defendants rejected. ECF No. 51, Ex. D. Defendants
27 rejected that proposal. *Id.* Defendants then offered a compromise July 14, 2025 trial date, which Plaintiffs
28

1 rejected. ECF No. 80 at 21. At an impasse, the Parties submitted the Joint Case Management Statement
2 detailing Plaintiff’s September trial schedule and Defendants’ June trial schedule and the reasons for such
3 proposals. ECF No. 80. Since that submission, Defendants provided a more detailed outline of their July
4 14 proposal. Plaintiffs reject that proposal.

5 Exhibit A captures the trial schedule negotiations, with corresponding dates for the Court’s
6 consideration. Below the Parties provide brief position statements.

7 **A. Plaintiff’s Position Statement**

8 Defendants’ new trial proposal continues to leave insufficient time for fact and expert discovery.
9 Even in merger cases, “litigation takes a certain amount of time” and self-imposed option dates do not
10 justify unrealistic schedules. *See U.S. v. UnitedHealth Group, Inc.*, No. 24-3267 (D. Md. Feb. 20, 2025)
11 (“Litigation takes a certain amount of time and I’m not going to put a schedule in place that is unrealistic,
12 doesn’t accommodate the Court’s other scheduling need and so forth just because I’ve been advised about
13 that December 31 [option] date.”); see also ECF No. 51 (citing transcripts from *United States v. Aetna*
14 and *United States v. AT&T*). Throughout the Parties’ negotiations, Defendants refused to provide
15 information showing that the option date is immovable. They stated, summarily, that renegotiating the
16 option date would “prolong uncertainty” and “risk financing,” but have not submitted affidavits from
17 executives or financial institutions stating that financing would be unavailable after October 9 or providing
18 any other concrete reason why October 9 is the final date to consummate the merger. As such, the needs
19 of the case should drive the schedule, not the option date.

20 This case can be litigated on an expeditious schedule, but not one that prejudices Plaintiff’s ability
21 to collect the evidence needed to prove its claim. Plaintiff’s proposal fits this bill. For instance, Plaintiff
22 proposes a tight but reasonable 98 days to conduct fact discovery. Defendants’ new proposal adds nine
23 business days to fact discovery for a total of 68 days—still less than what is needed to complete written
24 and document discovery and conduct up to 50 depositions. Similarly, Plaintiff’s proposal allows 21 days
25 between each round of expert reports so Plaintiff has the same amount of time as Defendants to process
26 and analyze backup data and respond to economic analyses. Defendants’ new proposal increases
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1 Plaintiff’s time to respond to their rebuttal report by a mere two days, from seven to nine, which is
 2 insufficient for this critical work. Rushing this schedule will not assist the Court in ruling on this case.

3 Defendants’ time restraints remain unreasonable and unrealistic. Plaintiff respectfully ask the
 4 Court to enter its proposed schedule setting trial to begin on September 8, 2025.

5 **B. Defendants’ Position Statement:**

6 Defendants have proposed two schedules, each designed to give the Court sufficient time to issue
 7 an opinion with the benefit of post-trial briefing prior to the Oct. 9, 2025 merger termination date. Both
 8 proposals are in line with normal merger practice and provide the parties adequate time to prepare for trial.
 9 ECF No. 80 at 21-22.

10 For the case to conclude prior to the termination date in the merger agreement, the Court would
 11 need to issue an opinion no later than Oct. 3, 2025 because, at DOJ’s request, Defendants agreed not to
 12 close the transaction until the 5th day following entry of a judgment. ECF 80 at 24. The Parties also agreed
 13 to allow ten days for post-trial briefing. *Id.* at 19. Under DOJ’s proposals, it is not possible for the Court
 14 to issue an opinion aided by post-trial briefing by Oct. 3.

15 **Days to Issue An Opinion After Post-Trial Briefing¹**

16 Oct. 27 Proposal	Sept. 8 Proposal	June 16 Proposal	July 14 Proposal
17 0	0	81 days	53 days

18 Notably, the investigative file, which was produced on February 20, confirms that DOJ spent
 19 approximately 12 months investigating the merger. Despite its head start on discovery, DOJ takes issue
 20 with Defendants’ trial proposals because of the timeline on which it must conduct the additional discovery
 21 it now seeks. But it is well established that merger challenges are tried on an expedited schedule, and
 22 parties to merger litigations routinely succeed in taking discovery on schedules like those proposed by
 23 Defendants. *Id.* Ex. B. DOJ had the power to compel extensive discovery during its investigation,
 24 obtaining 1.7 million documents from Defendants and tens of thousands from third parties, and had ample
 25 time to develop its economic analysis.

26
 27
 28 ¹ These counts assume a ten day trial, held Monday through Wednesday with half days Friday, ten days
 for post-trial briefing, and the five day waiting period for Defendants to close.

1 Defendants are prepared to try this case on its proposed dates, or any such date the Court deems
2 appropriate to provide it with sufficient time to issue an opinion by Oct. 3, 2025.

3 **III. Trial Witnesses**

4 The Parties agreed in their draft Joint Case Management Statement that “No Party may offer into
5 evidence at trial any portion of a person’s deposition testimony unless that person was identified on that
6 Party’s final trial witness list. No Party may call a person to testify as a live witness at trial (other than
7 solely for impeachment) unless that person was identified on that Party’s final trial witness list.” ECF No.
8 80 at 23. Parties have since agreed to a modification of that paragraph, allowing the Parties to admit into
9 evidence deposition testimony, or call a witness live, listed on either Party’s final witness list. The agreed
10 upon language is in the attached proposed order. *See Exhibit B.*

11 Dated: February 27, 2025

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ATTORNEY ATTESTATION

I, Michael J. Freeman, am the ECF user whose identification and password are being used to file the JOINT STATUS REPORT REGARDING CASE MANAGEMENT STATEMENT. In compliance with Local Rule 5-1(i)(3), I hereby attest that all signatories hereto concur in this filing.

/s/ Michael J. Freeman
Michael J. Freeman

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