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ORACLE AMERICA, INC.

21 UNITED STATES DISTRICT COURT

22 NORTHERN DISTRICT OF CALIFORNIA

23 SAN FRANCISCO DIVISION

24 ORACLE AMERICA, INC.

Plaintiff,

25 v.

26 GOOGLE INC.

27 Defendant.

Case No. CV 10-03561 WHA

**JOINT RESPONSE RE: JURY
QUESTIONNAIRE PROCEDURE (ECF
NOS. 1518 AND 1520)**

Dept.: Courtroom 8, 19th Floor

Judge: Honorable William H. Alsup

1 Plaintiff and Defendant in this matter (“Oracle” and “Google,” respectively) hereby
2 jointly submit this statement in response to the Court's inquiry of February 26, 2016 (ECF No.
3 1518), as supplemented by the Court on February 28, 2016 (ECF No. 1520).

4 The parties have met and conferred and have agreed on, and hereby propose, a form of a
5 questionnaire, a proposed procedure for dissemination, proposed instructions, the extent to which
6 the parties agree that answers to the questionnaire will not be used to impeach the verdict, and
7 the extent to which Internet searches or other investigations on venire should be permitted. The
8 parties have reached agreement, and submit a joint proposal, except where indicated below in
9 sections 2(e) and 2(f).

10 Subject to the Court’s approval, and except where otherwise indicated, the parties jointly
11 submit the following proposal in the areas outlined by the Court:

12 (1) The parties propose that the Court utilize the jury questionnaire jointly developed
13 by the parties and attached hereto as Appendix A (previously submitted in ECF No. 1512);

14 (2) The parties propose the following preferred procedure for disseminating and
15 collecting the jury questionnaire:

16 (a) On May 9, 2016, prospective jurors arrive at the courthouse and the Court
17 screens prospective jurors for hardship and time qualifications;

18 (b) The Court reads the parties’ Joint Statement of the case to the assembled
19 venire and also reads to the venire the names of potential witnesses in the
20 case;

21 (c) The Court gives the assembled venire of prospective jurors who have
22 passed the hardship, listing of witness, and time qualification process the
23 instructive admonishment attached hereto as Appendix B that strictly
24 forbids any independent research related to the case or jury questionnaire
25 or any communication in any form about the case from that point forward;

26 (d) The Court disseminates the juror questionnaire to prospective jurors who
27 have passed the hardship, listing of witnesses, and time qualification
28 processes and each prospective juror immediately fills out and returns to

1 the Court the completed juror questionnaire;

2 (e) Proposal by Oracle: Each party will be given copies of the completed jury
3 questionnaires as soon as possible. Oracle's counsel is willing to take
4 responsibility for copying the completed jury questionnaires at a neutral
5 vendor in the presence of Google's counsel, distributing a full set of
6 copies to each side's trial teams, and returning the originals to the Court
7 within 24 hours (if this process occurs on the morning of May 9, 2016, the
8 originals will be returned by the end of the day for jury questionnaires
9 received by counsel before noon). Jurors return to the courthouse on May
10 11, 2016 for oral voir dire (the parties respectfully request 30 minutes each
11 for oral voir dire in follow up to the questionnaires) and the jury is
12 selected and sworn on that day.

13 (f) Alternative proposed by Google: Each party will be given copies of the
14 completed jury questionnaires as soon as possible. Either Oracle's or
15 Google's counsel, by agreement, will take responsibility for promptly
16 copying the completed jury questionnaires at a neutral vendor in the
17 presence of the other party's counsel, distributing a full set of copies to
18 each side's trial teams on the afternoon of May 9, 2016, and then returning
19 the originals to the Court by the morning of May 10, 2016. Jurors return
20 to the courthouse on May 10, 2016 for oral voir dire (the parties
21 respectfully request 30 minutes each for oral voir dire in follow up to the
22 questionnaires) and the jury is selected and sworn on that day.

23 The parties prefer in-person dissemination, completion, and collection of the jury
24 questionnaire because it gives the Court control over the process, minimizes the chances of
25 prospective jurors conducting independent Internet research, ensures that the prospective juror is
26 the person filling the questionnaire out, ensures that people filling out the questionnaire have
27 been pre-cleared for hardship, and avoids the situation where the Court and the parties have
28 questionnaires for persons who do not show up for selection.

1 Alternatively, the parties propose that the Court mail the jury questionnaire and Appendix
2 B hereto to prospective jurors in advance with instructions to return the questionnaire by
3 Wednesday, May 4, 2016. The Court would then provide the questionnaire responses to the
4 parties on May 5, 2016 and prospective jurors would arrive to the courthouse on the morning of
5 May 9, 2016 to begin the jury selection process.

6 (3) The parties agree that honest answers to the questionnaire will not later be used to
7 impeach the verdict. The parties reserve their rights with respect to dishonest answers to material
8 voir dire questions to the extent that an honest answer would have provided a valid basis for a
9 challenge for cause. *See McDonough Power Equip., Inc. v. Greenwood*, 464 U.S. 548, 556
10 (1984); *Hanford Nuclear Reservation Litig. v. E.I. DuPont de Nemours & Co.*, 534 F.3d 986,
11 1015 (9th Cir. 2008).

12 (4) The parties agree that review of publicly available information should be allowed
13 as it may be helpful in selecting a fair and unbiased jury. The parties agree that passive
14 investigation of prospective juror's public presence on the Internet (including prospective jurors'
15 social media presence) should be allowed consistent with ethical and other guidance on the
16 matter. *See American Bar Association Standing Committee on Ethics and Professional*
17 *Responsibility, Formal Opinion 466*. The parties agree not to access any data on the venire that is
18 not equally available to the other party. By way of example and not limitation, each party agrees
19 not to access any non-public, proprietary sources of information that the party has access to by
20 virtue of its businesses or services. To the extent any party accesses non-public information, the
21 party shall immediately disclose that information to the Court and to the other party.

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Dated: February 29, 2016

Keker & Van Nest LLP

By: /s/ Robert A. Van Nest
ROBERT A. VAN NEST

Attorneys for Defendant
GOOGLE INC.

Dated: February 29, 2016

ORRICK, HERRINGTON & SUTCLIFFE
LLP

By: /s/ Peter A. Bicks
PETER A. BICKS

Attorneys for Plaintiff
ORACLE AMERICA, INC.

ATTESTATION

I, Peter A. Bicks, the ECF User whose ID and password are being used to filed this document, hereby attest that counsel for Google concurs in this filing.

/s/ Peter A. Bicks

APPENDIX A

1. **Full Name:** _____
First Middle Last

2. **Gender:** Female Male

3. **Date of birth:** _____ **Age:** _____

4. **Your first language, if not English:** _____

5. **City and area/neighborhood where you live, and for how long:** _____

7. **Current employment status:** (Check all that apply.)

Employed full-time Employed part-time Unemployed
 Self-employed Full-time student Disabled
 Homemaker Retired since (year: _____)

9. **Your current (or, if unemployed or retired, your most recent):**

Occupation: _____

Employer: _____

For how long? _____

11. **Do you or a family member or close friend have any training or experience in any of the following:** (Check all that apply.)

Law / The courts Accounting / Finance
 Computer programming Licensing Agreements
 Software development or open source software Dispute resolution / Mediation
 Intellectual property / Copyrights / Patents Supervisory or management responsibilities, or evaluating the performance of others

If yes to any, explain:

12. **Have you ever had any prior jury service?**
 Yes (When? _____) No

If Yes:

Was that service: Civil, ____ times Criminal, ____ times
Did all of the juries reach a verdict? Yes No
Were you ever the foreperson? Yes, ____ time(s) No
How would you describe your jury service?
 Positive Negative Mixed both positive and negative

6. **Highest level of education you have completed:**

Grade _____ Associate of Arts degree
 High school/GED Bachelor's degree
 Some college classes Master's degree
 Technical/Vocational Doctorate, M.D. or J.D.

Major(s): _____

Licenses/certifications: _____

8. **Current marital status:** (Check all that apply.)

Single, never married Engaged
 Married (____ years) Partnered (____ years)
 Divorced/separated (____ years) Widowed (____ years)

10. **Your spouse's/significant other's current (or most recent):**

Occupation: _____

Employer: _____

For how long? _____

13. **Have you or someone close to you ever:**

a. Been involved in any lawsuit Yes No

b. Worked for a company that was harmed by a competitor that copied its ideas or inventions? Yes No

c. Worked for a company accused of harming a competitor by copying its ideas or inventions? Yes No

d. Ever felt that you had an important idea or invention stolen from you? Yes No

e. Ever been accused of stealing an important idea or invention? Yes No

f. Invented something or applied for a copyright, trademark, or patent? Yes No

g. Signed a confidentiality or non-disclosure agreement? Yes No

h. Been involved in a dispute over an idea or invention? Yes No

i. Been involved in a dispute related to a patent, trademark, or copyright? Yes No

j. Been involved in a dispute over software, technology, or licensing? Yes No

If yes to any, explain:

<p>(Check all that apply)</p> <p><input type="checkbox"/> Apple iPhone or other IOS device <input type="checkbox"/> Android device</p> <p><input type="checkbox"/> Windows / Microsoft <input type="checkbox"/> BlackBerry</p> <p><input type="checkbox"/> Other (specify): _____</p>	<p>software, the tech industry, and tech products?</p> <p><input type="checkbox"/> Very much <input type="checkbox"/> Moderately</p> <p><input type="checkbox"/> Only a little <input type="checkbox"/> Not at all</p>
<p>16. How familiar are you with computer software/programming?</p> <p><input type="checkbox"/> Very familiar <input type="checkbox"/> Somewhat familiar</p> <p><input type="checkbox"/> Not very familiar <input type="checkbox"/> Not familiar at all</p>	<p>17. How familiar are you with the term “open source?”</p> <p><input type="checkbox"/> Very familiar <input type="checkbox"/> Somewhat familiar</p> <p><input type="checkbox"/> Not very familiar <input type="checkbox"/> Not familiar at all</p>
<p>18. How familiar are you with the Android software platform?</p> <p><input type="checkbox"/> Very familiar <input type="checkbox"/> Somewhat familiar</p> <p><input type="checkbox"/> Not very familiar <input type="checkbox"/> Not familiar at all</p>	<p>19. How familiar are you with the Java software platform?</p> <p><input type="checkbox"/> Very familiar <input type="checkbox"/> Somewhat familiar</p> <p><input type="checkbox"/> Not very familiar <input type="checkbox"/> Not familiar at all</p>
<p>20. How often do you use Oracle products, such as Oracle Database, PeopleSoft, Enterprise Manager, or the Java Platform? <input type="checkbox"/> Daily <input type="checkbox"/> A few times per week</p> <p><input type="checkbox"/> A few times per month <input type="checkbox"/> A few times per year <input type="checkbox"/> Never</p>	<p>21. How often do you use Google products or services, such as Google Search, Gmail or Google Maps?</p> <p><input type="checkbox"/> Daily <input type="checkbox"/> A few times per week <input type="checkbox"/> A few times per month</p> <p><input type="checkbox"/> A few times per year <input type="checkbox"/> Never</p>
<p>22. Do you know anyone who has ever worked for Oracle?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <u>If yes</u>, explain:</p>	<p>23. Do you know anyone who has ever worked for Google?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <u>If yes</u>, explain:</p>
<p>24. Do you have any opinions about Oracle, or any of its executives, such as Larry Ellison? (Check all that apply.)</p> <p><input type="checkbox"/> Yes, positive <input type="checkbox"/> Yes, negative <input type="checkbox"/> No</p> <p><u>If yes</u>, explain:</p>	<p>25. Do you have any opinions about Google, or any of its executives, such as Larry Page? (Check all that apply.)</p> <p><input type="checkbox"/> Yes, positive <input type="checkbox"/> Yes, negative <input type="checkbox"/> No</p> <p><u>If yes</u>, explain:</p>
<p>26. Have you ever paid license fees or worked for an organization that paid license fees for the use of any computer software, programming, or code?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <u>If yes</u>, explain:</p>	<p>27. Do you have any opinions about the United States Patent and Trademark Office or the United States Copyright Office?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <u>If yes</u>, explain:</p>
<p>28. Without talking to anyone else or looking anything up (which is not permitted by order of this Court): Have you read or heard anything about Oracle pursuing a lawsuit against Google? <input type="checkbox"/> Yes <input type="checkbox"/> No <u>If yes</u>, explain:</p>	<p>29. Have you formed any opinions about this lawsuit?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <u>If yes</u>, explain:</p>
<p>30. Describe anything not covered by this questionnaire that might affect your ability to be a fair and impartial juror:</p>	<p>31. Describe any ethical, religious, political, or other beliefs that may affect your jury service or prevent you from serving as a juror:</p>

I swear that all the foregoing is true and correct.

SIGNATURE: _____

DATE: _____

APPENDIX B

_____ Juror Number

United States District Court
Northern District of California

Thank you for completing the enclosed questionnaire and returning it to the Court. This questionnaire is part of the jury selection process, and it will speed up the process of jury selection and help it proceed as quickly and easily as possible when you come to court. Please take as much time as you need to complete this questionnaire.

The questions are asked not to invade your privacy, but to make sure that you can be a fair and impartial juror. If you feel that any question requires an answer that is too sensitive to be included in a public record or to discuss in public, please answer the question and then write PRIVATE next to the question. You will have an opportunity to explain your answer in private.

From this moment forward, and through the entire time you are involved with this case, you are ordered not to discuss this case with anyone; do not allow anyone to discuss the case with you. The only information you may tell anyone is that you are in a jury pool for a trial and the time requirements of that trial. You are also ordered not to read, listen to, or watch any news, Internet, or other media accounts of this case, past or present.

You may not do any research about the parties or subject matter involved in this case.

You are further ORDERED not to email, text, tweet, or blog about this case or any of the issues, parties, or attorneys involved in this case. Do not use any search engines, such as Yahoo or Google, to obtain or share information about the parties, attorneys, or issues in this case. Do not visit any Internet chat rooms or use any social media sites or apps, like Twitter, Snapchat, or Facebook, or any other sites on the World Wide Web that might in any way contain information relating to the issues, attorneys, or parties in this case.

Please initial in the following box to show you read and understand this prohibition:

_____ INITIALS

If there is any reason why you might not be able to give both sides a fair trial in this case, it is important that you say so. Because this questionnaire is part of the jury selection process, you must fill out this questionnaire by yourself, without any assistance from others.

Please answer the questions as accurately, fully, and honestly as possible, and remember to sign your questionnaire. Keep in mind that there are no “right” or “wrong” answers—only complete or incomplete ones. All answers are given under oath and under penalty of perjury.

Please use a black pen rather than a pencil or colored pen.

PLEASE DO NOT WRITE ON THE BACK OF ANY PAGE, AS THESE QUESTIONNAIRES WILL BE COPIED.

Thank you for your time, patience, and cooperation.