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7 Attorneys for Plaintiffs
8 ELASTICSEARCH, INC. and
ELASTICSEARCH B.V.

Attorneys for Defendants
AMAZON.COM, INC. and AMAZON WEB
SERVICES, INC.

10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN JOSE DIVISION**

13 ELASTICSEARCH, INC., a Delaware
14 corporation, and ELASTICSEARCH B.V., a
Dutch corporation,

15 Plaintiffs,

16 v.

17 AMAZON.COM, INC., a Delaware
18 corporation, and AMAZON WEB SERVICES,
19 INC., a Delaware corporation,

20 Defendants.

Case No. 5:19-cv-06158-EJD

**STIPULATION AND [PROPOSED]
ORDER TO MODIFY CASE
SCHEDULE; DECLARATION OF
DAVID R. EBERHART**

1 Pursuant to Civil Local Rules 6-1(b) and 6-2, Plaintiffs Elasticsearch, Inc. and
2 elasticsearch B.V. (“Plaintiffs”) and Defendants Amazon.com, Inc. and Amazon Web Services,
3 Inc. (“Defendants”), by and through their attorneys of record, stipulate and request as follows:

4 WHEREAS, the Court entered a Case Management Order on January 22, 2020 (Dkt. No.
5 26), and the Court, pursuant to the parties’ stipulations, entered Orders to Modify the Case
6 Schedule on June 17, 2020 (Dkt. No. 28), September 24, 2020 (Dkt. No. 30), December 4, 2020
7 (Dkt. No. 32), and March 29, 2021 (Dkt. 34);

8 WHEREAS, the parties remain actively engaged in substantive settlement discussions that
9 seek to resolve this dispute in its entirety, the parties have exchanged multiple iterations of a
10 potential settlement term sheet, the parties have made significant progress in their settlement
11 negotiations, and have significantly narrowed the areas remaining in settlement discussions;

12 WHEREAS, on January 14, 2021, Plaintiffs announced that they are changing the terms on
13 which they license certain of their products going forward;

14 WHEREAS, Defendants announced on January 21, 2021, that due to this license change
15 by Plaintiffs, Defendants intend to (1) create their own forks of certain ELASTICSEARCH
16 source code licensed under the Apache 2.0 license, (2) maintain and develop those forks
17 separately from Plaintiffs’ ongoing maintenance and development of its ELASTICSEARCH
18 products, (3) release products and services based on those forks, and (4) use branding for those
19 products and services that do not use the ELASTICSEARCH mark;

20 WHEREAS, since their January 21 announcement, Defendants have worked on their fork
21 projects of certain ELASTICSEARCH source code but have not yet released General
22 Availability versions of those projects;

23 WHEREAS, on April 12, 2021, Defendants announced their plans to rename their Amazon
24 Elasticsearch Service to Amazon OpenSearch Service and suggested they would change the
25 branding of Open Distro for Elasticsearch, but Defendants have not yet renamed the service or
26 changed any branding;

27 WHEREAS, the parties anticipate that Defendants will soon implement this renaming and
28 rebranding, and that such rebranding will provide the parties with clarity on the possibility of a

1 near-term resolution of Plaintiffs' claims. Accordingly, the parties do not expect that further
2 continuances of the Case Management Schedule will be necessary;

3 WHEREAS, the parties respectfully submit that continuing the existing deadlines in this
4 case while the parties continue to engage in substantive settlement discussions would serve the
5 interests of judicial economy, minimize the burden and expense of discovery on the parties, and
6 maximize the opportunity for settlement and the efficient progress of this litigation;

7 WHEREAS, the parties respectfully submit that good cause exists to continue the existing
8 deadlines by approximately thirteen weeks to minimize use of the Court's time and costs to the
9 parties while the parties continue to conduct productive settlement discussions;

10 WHEREAS, the parties expect that, should their settlement talks not resolve this matter in
11 its entirety, they will meet the case deadlines proposed below;

12 NOW, THEREFORE, the parties, through their respective counsel, hereby stipulate to and
13 respectfully request that the Court order the following modifications to the case management and
14 pretrial dates:

Event	Current Deadline	New Deadline
Joint Trial Setting Conference Statement <i>(see Section III(C)(2) of Standing Order for Civil Cases)</i>	June 28, 2021	September 27, 2021
Trial Setting Conference <i>(see Section III(C)(1) of Standing Order for Civil Cases)</i>	July 8, 2021	October 7, 2021
Fact Discovery Cutoff	August 4, 2021	November 3, 2021
Designation of Opening Experts with Reports	August 25, 2021	November 24, 2021
Designation of Rebuttal Experts with Reports	September 22, 2021	December 22, 2021
Designation of Reply Experts with Reports	October 6, 2021	January 5, 2022
Expert Discovery Cutoff	October 20, 2021	January 19, 2022
Deadline(s) for Filing Discovery Motions	<u>See</u> Civil Local Rule 37-3	<u>See</u> Civil Local Rule 37-3
Deadline to Complete Private Mediation	November 10, 2021	February 9, 2022
Deadline for Filing Dispositive Motions <i>(see</i>	December 10, 2021	March 11, 2022

STIPULATION AND [PROPOSED] ORDER TO MODIFY CASE SCHEDULE
CASE NO. 5:19-CV-06158-EJD

1	<i>Section IV and V of Standing</i>		
2	<i>Order for Civil</i>		
3	<i>Cases)</i>		
4	Deadline for Filing Opposition(s) to Dispositive Motions	January 14, 2022	April 15, 2022
5	Deadline for Filing Reply(ies) to Dispositive Motions	February 4, 2022	May 6, 2022
6	Hearing on Anticipated Dispositive Motion(s)	March 24, 2022	June 23, 2022

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9 IT IS SO STIPULATED.

10 Dated: June 23, 2021

10 DAVID R. EBERHART
11 JAMES K. ROTHSTEIN
11 DANIEL H. LEIGH
11 O'MELVENY & MYERS LLP

12 By: /s/ David R. Eberhart
13 David R. Eberhart

14 Attorneys for Plaintiffs
14 ELASTICSEARCH, INC. and
15 ELASTICSEARCH B.V.

16 Dated: June 23, 2021

17 JOSEPH C. GRATZ
17 ADITYA V. KAMDAR
18 DURIE TANGRI LLP

19 By: /s/ Joseph C. Gratz
19 Joseph C. Gratz

20 Attorneys for Defendants
20 AMAZON.COM INC. and
21 AMAZON WEB SERVICES

22
23 PURSUANT TO STIPULATION, IT IS SO ORDERED.

24
25 Dated: _____

25 _____
26 Hon. Edward J. Davila
26 United States District Judge

ATTESTATION

Pursuant to Civil Local Rule 5-1(i)(3), I attest that all other signatories listed, and on whose behalf this filing is submitted, concur in the filing’s content and have authorized the filing.

Dated: June 23, 2021

/s/ David R. Eberhart
David Eberhart

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DECLARATION OF DAVID R. EBERHART

I, David R. Eberhart, hereby declare:

1. I am a partner at O’Melveny & Myers LLP, counsel of record for plaintiffs Elasticsearch, Inc. and elasticsearch B.V. I make this declaration based on my own personal knowledge. If called as a witness, I could and would testify under oath to the matters set forth herein.

2. The parties remain actively engaged in substantive settlement discussions that seek to resolve this dispute in its entirety, the parties have exchanged multiple iterations of a potential settlement term sheet, and have significantly narrowed the areas remaining in settlement discussions.

3. On January 14, 2021, Plaintiffs announced that they are changing the terms on which they license certain of their products going forward. Defendants announced on January 21, 2021, that due to this license change by Plaintiffs, Defendants intend to (1) create their own forks of certain ELASTICSEARCH source code licensed under the Apache 2.0 license, (2) maintain and develop those forks separately from Plaintiffs’ ongoing maintenance and development of its ELASTICSEARCH products, (3) release products and services based on those forks, and (4) use branding for those products and services that do not use the ELASTICSEARCH mark. Since their January 21 announcement, I understand that Defendants have worked on their fork projects of certain ELASTICSEARCH source code but have not yet released General Availability versions of those projects. On April 12, 2021, Defendants announced their plans to rename their Amazon Elasticsearch Service to Amazon OpenSearch Service and suggested they would change the branding of Open Distro for Elasticsearch, but Defendants have not yet renamed the service or changed any branding.

4. The parties anticipate that Defendants will soon implement this renaming and rebranding, and that such rebranding will provide the parties with clarity on the possibility of a near-term resolution of Plaintiffs’ claims.

5. There have been five previous time modifications in this case: (1) on October 22, 2019, pursuant to the parties’ stipulation, Defendants received extended time to respond to the

