

November 29, 2017

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**Via Email**

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Re: *Hewlett Packard Enterprise Company v. Springpath, Inc.*,  
C.A. No. 4:15-cv-13345-TSH (D. Mass)

Dear Bradley:

I write in response to your letter dated November 14, 2017, which responded in part to my letter dated November 6, 2017.

**A. Springpath's Discovery Responses**

With respect to the alleged issues raised in Section C of your November 14 letter, Springpath responds as follows:

- Interrogatory No. 9. Our investigation into this issue is ongoing; however, Springpath will supplement its response to this interrogatory with respect to the version of Data Platform that has been actually accused in this litigation (i.e., pre-version 2.5).
- RFP Nos. 1-4, 14-16, 22-26, 28, 36, 43, 45, 47, 59-81, 86, 89, and 90. It appears that Plaintiff takes issue with Springpath's responses to the extent these responses include the following sentence: "Springpath is withholding and will not produce documents and things subject to these objections." Springpath confirms that it is not withholding any specific responsive, non-privileged documents and is, instead, producing documents subject to its objections as indicated in the corresponding responses. For example, for RFP Nos. 1-4, Springpath is producing source code for the pre-version 2.5 and version 2.5 of Springpath's Data Platform product and corresponding technical documents, including documents sufficient to show the structure, operation, and function of Data Platform; design specifications; and user manuals and installation manuals for all Data Platform releases. As another example, for RFP 22, Springpath is producing documents relating to the Asserted Patent that it filed with the Patent Office.
- RFP Nos. 92, 93, 94, 96 and 97. To the extent there were any documents responsive to these requests, they would have been exchanged between counsel for Springpath and/or Cisco pursuant to the common interest privilege. To the extent that any responsive,

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privileged documents were created before the filing of the Complaint, Springpath will provide a privilege log consistent with the schedule to be agreed upon by the parties.

- RFP Nos. 101, 102, and 103. As set forth in my email dated November 16, 2017, with respect to “RFPS Relating to Version 2.5 of Springpath’s Data Platform,” Springpath’s source code for version 2.5 is available for review at WilmerHale’s offices in Boston. We further direct you to the document bearing the bates-number SPR0011087. Springpath’s investigation is ongoing, and Springpath will supplement as able and appropriate.
- RFP No. 6. Springpath confirms that it has no responsive, non-privileged documents.
- RFP No. 7. Springpath will produce documents sufficient to identify each repository of electronically stored information from which Springpath produced responsive documents, to the extent they exist and can be located after a reasonable search.
- RFP Nos. 8, 9, 10, 87, and 88. Springpath does not believe that documents regarding its own and/or third-party indemnification agreements and obligations are relevant to the claims or defenses of this action. Notwithstanding that, Springpath is willing to meet and confer to discuss the purported relevance of these requests.
- RFP Nos. 11, 12, and 52. It is not clear what Plaintiff is seeking with these requests, and to the extent decipherable, the excessively broad scope of these requests is not proportional to the needs of the case. Springpath is willing to meet and confer to discuss the scope of these requests.
- RFP Nos. 13, 35, 37, 38, and 39. Springpath is producing Springpath’s marketing documents, including press releases, news articles and other media coverage, data sheets, white papers, validation papers, marketing presentations, and blog entries from Springpath’s website.
- RFP Nos. 18, 24, 25, 50, and 55. Since serving these discovery responses, Springpath has served its non-infringement and invalidity contentions and made the corresponding productions. In addition, Springpath is producing (a) technical documents, including source code for the pre-version 2.5 and version 2.5 of Springpath’s Data Platform product and corresponding technical documents, including documents sufficient to show the structure, operation, and function of Data Platform, design specifications, and user manuals and installation manuals for all Data Platform releases, (b) marketing documents, including press releases, news articles and other media coverage, data sheets, white papers, validation papers, marketing presentations, and blog entries from

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Springpath's website, and (c) documents showing Springpath's revenues, costs, expenses, and profits. Springpath will serve its expert reports in accordance with the schedule as set by the Court.

- RFP Nos. 20 and 21. All communications Springpath has had with third parties, including Cisco, relating to this litigation and the asserted patent would have been made pursuant to the common interest privilege. To the extent that any responsive, privileged documents were created before the filing of the Complaint, Springpath will provide a privilege log consistent with the schedule to be agreed upon by the parties.
- RFP Nos. 27 and 31. Springpath does not believe that its projected revenues are relevant to the claims or defenses of this action. However, Springpath is willing to meet and confer to discuss the relevance of these requests.
- RFP Nos. 30, 40, 44, 53, and 54. Springpath will conduct a reasonable search for, and produce, documents sufficient to show Springpath's revenues, costs, expenses, and profits.
- RFP No. 34. Springpath will conduct a reasonable search for, and produce, industry studies and reports that provide United States market data for Springpath's Data Platform, to the extent they exist, subject to any third-party confidentiality requirements.
- RFP Nos. 41 and 100. The valuation of Springpath and its technologies are not relevant to the claims or defenses of this action. Springpath is willing to meet and confer to discuss the relevance of this request.
- RFP Nos. 42 and 46. Based on its investigation to date, there are no non-privileged documents responsive to these requests.
- RFP Nos. 48, 49, 51, 86, 91, 95, 98, and 99. The relationships between Springpath and third parties (including Cisco), the business dealings between the entities, and communications arising from those dealings, are not relevant to the claims or defenses of this action. Springpath is willing to meet and confer to discuss the relevance of these requests.
- RFP Nos. 56 and 84. The identification of all documents reviewed or relied upon to respond to Plaintiffs' discovery responses, motions, and complaint is protected from disclosure under the attorney client privilege and work product doctrine and overly broad so as not to be proportional to the needs of the case. Springpath has produced documents

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as indicated in its discovery responses or as otherwise required by the Federal Rules of Civil Procedure and Local Rules of the Court.

- RFP Nos. 57 and 58. Claim construction briefing has been completed, and Springpath has produced documents responsive to these requests.
- RFP No. 82. Springpath has not yet identified all the documents it intends to offer as evidence in this litigation, but when Springpath identifies non-privileged documents it intends to rely on, it will produce such documents. In addition, Springpath will produce non-privileged documents it intends to offer as evidence in this litigation consistent with the Court's scheduling order, including in its expert reports, exhibit list, and other pretrial filings.
- RFP No. 83. The request for all testimony, including trial testimony, deposition testimony, affidavits or declarations, by any person Springpath expects to call as a witness, including expert witnesses, is overbroad, not relevant to the claims or defenses of this action, and not proportional to the needs of this case. Springpath is willing to meet and confer regarding the scope of this request.
- RFP No. 85. Springpath refers HPE to the CV(s) of its expert witness(es), which Springpath has made or will be making available pursuant to Paragraph E, ¶ 13 of the Protective Order.

As discussed, we are available to meet and confer on December 1 at 12:00 p.m. PT on any remaining issues identified above.

## **B. Plaintiff's Discovery Responses**

As detailed in my letter dated November 6, 2017, Plaintiff's responses to Interrogatories Nos. 1, 2, 3, 7, and 8 are wholly deficient. Your November 14, 2017 letter fails to cure these deficiencies. First, with respect to Interrogatories Nos. 1, 3, 7, and 8, please provide a date certain by which Plaintiff will supplement its responses. Second, with respect to Interrogatory No. 2, Plaintiff asserts that it is not required to elect its theory of damages during the discovery process. This is incorrect.

Interrogatory No. 2 seeks information regarding Plaintiff's damages claims against Springpath. At a minimum, Plaintiff must supplement its interrogatory response to state whether it intends to seek lost profits, as well as provide specifics as to the factual bases for damages in this case. Springpath's production of "damages-related documents" is irrelevant to Plaintiff's

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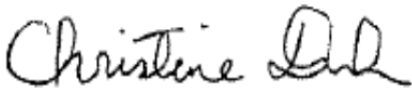
obligation to provide a substantive response to this interrogatory. Springpath intends to move to compel Plaintiff to answer this interrogatory if Plaintiff maintains its refusal to answer.

Regarding HPE's responses to Springpath's RFPs, please confirm whether:

- HPE is withholding any specific responsive, non-privileged documents based on its objections to each of Springpath's RFPs;
- HPE is claiming privilege over any responsive documents exchanged between SimpliVity and HPE; and
- HPE will be producing documents relating to the valuation of SimpliVity and its technologies in response to Springpath's RFPs.

Please be prepared to discuss the above-referenced issues during our upcoming meet and confer.

Best regards,



Christine Duh