



1 Plaintiffs Open Source Security, Inc. (“OSS”) and Bradley Spengler (collectively, “Plaintiffs”),  
2 and Defendant Bruce Perens jointly submit this Joint Case Management Statement and Rule 26(f)  
3 Report and Proposed Order pursuant to the Standing Order for All Judges of the Northern District of  
4 California dated January 17, 2017, Civil Local Rule 16-9, and Federal Rule of Civil Procedure 26(f).

### 5 **1. Jurisdiction & Service**

6 This action was filed on July 17, 2017 in the Northern District of California. Jurisdiction is  
7 properly conferred under 28 U.S.C. § 1332 (diversity). Mr. Perens does not dispute personal  
8 jurisdiction. Venue is proper in the Northern District of California pursuant to 28 U.S.C. § 1391(b)(1)  
9 and/or (b)(2). Defendant Perens agreed to waive service. Plaintiffs contend that the identity of other  
10 defendants (if any) is currently unknown and can only be ascertained after initiation of discovery,  
11 pursuant to Fed. R. Civ. P. 26. Mr. Perens is not aware of any basis to add other defendants. Mr.  
12 Perens has timely responded to the Complaint and First Amended Complaint by filing a combined  
13 special motion to strike pursuant to the California anti-SLAPP statute (Cal. Code Civ. Proc. § 425.16)  
14 and motion to dismiss for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6)  
15 in response to each.

### 16 **2. Facts**

#### 17 **Plaintiffs’ Statement:**

18 Open source software is computer software that is made available with source code that can be  
19 modified, used, or shared under certain defined terms and conditions. One such license is the GNU  
20 General Public License version 2 (“GPL”) which defines redistribution rights to any software released  
21 under the license. The Linux kernel code is released under the GPL. As stated in the preamble of the  
22 GPL, software released under the license is considered “free software,” that is, freedom to distribute  
23 (or to not distribute), and developers are free to charge for such distribution as a service, if they wish  
24 to. The GPL in its preamble provides the licensee the “freedom to distribute free software ... .” and  
25 this right is extended to Plaintiffs as well (as a licensee of the Linux kernel code). Plaintiffs are also  
26 granted the freedom to distribute their modifications or additions to the Linux kernel code, under the  
27 GPL.

28 Plaintiff Open Source Security Inc. (OSS) is a small private company located in Pennsylvania  
and develops software code that fixes security vulnerabilities in the Linux kernel code (a concept

1 commonly referred to as *patching* or providing *patches*). OSS releases the *patches*, in source code  
2 form, under the GPL, to approximately 45 of its customers (at the time the blog posts were published)  
3 via a Stable Patch Access Agreement (“Access Agreement”). The Access Agreement relates to  
4 customers’ access and utilization of OSS’ server resources to download the patches, provided as a  
5 service.

6 In the Access Agreement, OSS’ customers are unequivocally informed that they have all the  
7 rights under the GPL for the current *patches* being released. Customers are provided an, optional,  
8 *incentive* to not redistribute the patches outside the boundaries defined in the Access Agreement if they  
9 wish to utilize its server resources and receive continued access to future versions of the *patches*. Per  
10 the Access Agreement, if Plaintiffs’ customers wish to, they are free to redistribute the patches in their  
11 possession however, Plaintiffs reserve the right to terminate future services (that is, access to its server  
12 resources and refuse to do future business) if the Access Agreement is violated.

13 Defendant Bruce Perens is a famous and well-regarded, personality in the open source  
14 community. Perens is also respected as an expert in open source matters and has published 24 books on  
15 the subject. He has also appeared as an expert witness in court. Perens also thoroughly understands the  
16 law. Although not an attorney himself, Perens has taught continued legal education (CLE) to attorneys  
17 in many states. Further Perens has also implied that he understands the law better than attorneys  
18 admitted to the U.S. Supreme Court. The open source community, including Plaintiffs, have no reason  
19 to doubt or question Perens’ knowledge or expertise in the subject matter.

20 This action began due to a blog post that was initially published on June 28, 2017, and further  
21 updated on July 10, 2017 by Perens, in which he discussed his “strong opinion” on how Plaintiff’s  
22 customers were subjecting themselves to legal liability by doing business with Plaintiff.

23 The underlying *premise* of both publications was that the GPL “explicitly prohibits the addition  
24 of terms such as [those provided by the Access Agreement].” Based on this premise, Perens stated that  
25 Plaintiffs’ redistribution clause of the Access Agreement was, *as a matter of fact*, violating the GPL,  
26 and thus the *patches* were a product of unlicensed work. Based on such an assertion, Perens expressed  
27 his strong opinion stating that Plaintiff’s customers were subjecting themselves to potential legal  
28 liability under copyright and/or contract law from the creators of the Linux kernel.

Perens admitted that Plaintiffs were not violating the GPL under the Access Agreement. On  
July 9, 2017, at or about 5:09 p.m. (per Sladot.org timestamp), prior to updating the blog post, Perens,  
responding to a commenter on slashdot.org, admitted that “[*t*]he problem isn’t with the text [*of the*  
*Access Agreement*]. It’s with what else they have told their customers. It doesn’t even have to be in

1 *writing. I have witnesses.”* However, on July 10, 2017, at or about 8:15 a.m. (pacific time), Perens  
2 updated the blog post and explicitly published that the Access Agreement violated the GPL.

3 Due to Perens’ actions and published statements in his blog post Plaintiffs have suffered  
4 financial harm, including loss of potential customers and loss of good will.

5 **Mr. Perens’s Statement:**

6 “Open Source” software is software for which the source code is made freely available to all  
7 users, allowing the public to access and modify the code. These conditions are maintained through  
8 Open Source licensing terms. The most common Open Source license is the GNU General Public  
9 License, or GPL. The GPL is designed to make sure that those who receive software under the GPL  
10 have the freedom to distribute copies and modifications of such software, among other rights.

11 Plaintiff Open Source Security, Inc. (“OSS”) is a software company that provides security  
12 patch software for the Linux Operating System under the brand name Grsecurity, and Plaintiff Bradley  
13 Spengler is the CEO and sole shareholder of OSS. Grsecurity uses licensed work of the Linux kernel  
14 and is governed by the GPL version 2 (“GPLv2”). The GPLv2 prohibits those who distribute software  
15 subject to the GPL from placing further restrictions on recipients’ rights, such as the right to freely  
16 redistribute software. OSS, however, distributes its Grsecurity software subject to an agreement that  
17 threatens to penalize recipients if they exercise their right to freely redistribute the software.

18 Defendant Bruce Perens is one of the founders and supporters of the Open Source software  
19 movement, and he regularly comments on topics related to Open Source. On June 28, 2017, Mr. Perens  
20 posted a blog entry on his personal website expressing his opinion that OSS imposes restrictions on  
21 software recipients’ rights, which is prohibited by the GPLv2 and would render the Grsecurity  
22 software infringing and potentially subject customers to risk for liability. Mr. Perens’s blog post was in  
23 response to other commentary in the Open Source community about OSS’s practices. On July 9th, a  
24 third-party commenter shared an excerpt from Mr. Perens’s post on the website Slashdot, with a link to  
25 Mr. Perens’s post. Slashdot readers engaged in a robust discussion in the public comments section on  
26 that page, commenting on and debating the compatibility of OSS’s practices with the GPLv2 and  
27 related topics. Mr. Perens joined the conversation, explaining his opinions further. Also on July 9,  
28 another commenter stated that he or she had read the Grsecurity agreement and stated that “there is

1 nothing to prevent redistribution of a patch under the terms and conditions of the GPLv2.” The  
2 commenter then purported to quote or paraphrase the Grsecurity agreement, writing: “It states that if it  
3 a patch is distributed *outside of the terms of the GPLv2*, then access to *further patches in the future* (not  
4 the patch provided) will be denied, on a works for hire basis.” Mr. Perens responded about 10 minutes  
5 later, stating: “The problem isn’t with the text there. It’s with what else they have told their customers.  
6 It doesn’t even have to be in writing. I have witnesses.” While the commenter had posted a link to the  
7 Grsecurity agreement, Mr. Perens did not realize it at the time, and Mr. Perens responded to the  
8 commenter’s characterization of the agreement. Because Mr. Perens knew from customers that OSS  
9 placed restrictions on customers’ ability to redistribute software, he expressed his opinion that such  
10 restrictions would violate GPL, regardless of whether they were in writing. On the morning of July 10,  
11 Mr. Perens reviewed the Grsecurity agreement and determined that it did in fact violate GPL, and he  
12 updated his blog. Plaintiffs twist Mr. Perens’s statements to be an “admission” that OSS does not  
13 violate the GPL based on restrictions in its Grsecurity agreement. Contrary to Plaintiffs’ assertions,  
14 however, Mr. Perens has consistently opined that OSS violates the GPL to the extent it imposes  
15 penalties for redistribution of the Grsecurity software.

16 Plaintiffs now seek to “win” a public debate with Mr. Perens about whether their practices  
17 violate GPL. Rather than expressing their opinions on public forums, however, they have filed this  
18 lawsuit, including two complaints asserting claims of defamation, false light, and intentional  
19 interference with economic advantage. But Plaintiffs fail to identify any statements or conduct by Mr.  
20 Perens that are actionable under the law. Instead, Plaintiffs attack protected opinions that cannot be  
21 proven false, particularly considering that the question of whether the Grsecurity agreement violates  
22 the GPLv2 is an unsettled legal issue and therefore a matter of opinion—not a provably false fact—and  
23 any opinion by the Court regarding whether OSS violates GPL would be advisory and could not  
24 retroactively make Mr. Perens’s opinions false. Mr. Perens therefore has moved to dismiss and to  
25 strike both complaints, and he seeks attorneys’ fees for being forced to defend a baseless suit.

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1 **3. Legal Issues**

2 **Plaintiffs' Statement:**

3 The legal issues in this case include the following:

4 a. DEFAMATION PER SE

5 Whether defendants' alleged conduct constituted defamation (libel) per se.

6 b. DEFAMATION PER QUOD

7 Whether defendants' alleged conduct constituted defamation (libel) per quod.

8 c. FALSE LIGHT

9 Whether defendants' alleged conduct constituted false light.

10 d. TORTIOUS INTERFERENCE WITH PROSPECTIVE ADVANTAGE

11 Whether defendants' alleged conduct constituted tortious interference with prospective advantage.

12 **Mr. Perens's Statement:**

13 The central disputed factual and legal issues include:

- 14 a) Whether Plaintiffs' claims fail because Mr. Perens's interpretation of an unsettled legal issue is  
15 a non-actionable statement of opinion;
- 16 b) Whether Plaintiffs' claims of intentional interference with prospective economic advantage also  
17 should be dismissed because they fail to allege any independently wrongful act; and
- 18 c) Whether the Complaint should be stricken under the California anti-SLAPP law, Cal. Civ.  
19 Proc. Code § 425.16 because:
- 20 i) Mr. Perens's blog posts about his opinions on Plaintiffs' business practices are  
21 protected under the California anti-SLAPP law; and
- 22 ii) Plaintiffs cannot establish a probability of prevailing on any asserted claim.

23 Additional disputed factual and legal issues include:

- 24 a) Whether Mr. Perens's opinions about the proper interpretation of the GPLv2 involve a matter  
25 of public concern such that Plaintiffs must prove falsity;
- 26
- 27

- 1 b) If Mr. Perens's opinions constitute provably false assertion of facts, whether he truthfully stated  
 2 that the Grsecurity agreement violates the GPLv2 or whether he knew or should have known  
 3 that such statements were false even though they relate to a matter of first impression;  
 4 c) Whether Mr. Perens's opinions about his interpretation of OSS's licensing terms creates an  
 5 implication regarding Mr. Spengler that would be highly offensive to a reasonable person; and  
 6 d) Whether Mr. Spengler is entitled to maintain a cause of action for intentional interference based  
 7 on alleged interference with OSS's current and prospective customers.

8 The Court has not yet ruled on Mr. Perens's Anti-SLAPP Motion and Motion to Dismiss, and  
 9 Mr. Perens has not filed a responsive pleading. Should Plaintiffs' First Amended Complaint survive,  
 10 Mr. Perens anticipates additional factual and legal disputes may be identified, including based on  
 11 affirmative defenses.

#### 12 **4. Motions**

##### 13 **Previous Motions:**

14 <b>Date filed</b>	<b>Party</b>	<b>Motion Name/Type</b>	<b>Status</b>
15 9/18/17	Defendant Bruce Perens	Motion to Dismiss with Prejudice Pursuant to Fed. R. Civ. P. 12(b)(6) and Special Motion to Strike Pursuant to the California Anti-SLAPP Statue, Code of Civil Procedure Section 425.16	Withdrawn as moot due to Plaintiffs' filing of the First Amended Complaint (10/10/17)
18 9/29/17	Plaintiff Bradley Spengler	First Motion for Joinder, pursuant to Fed. R. Civ. P. 19	Terminated by Court (10/11/17)
19 10/2/17	Plaintiff Bradley Spengler	Second Motion for Joinder, pursuant to Fed. R. Civ. P. 20	Granted (10/18/17)
20 10/20/17	Defendant Bruce Perens	Motion to Continue Plaintiff's Motion for Partial Summary Judgment	Withdrawn pursuant to Order Re: Stipulation (10/24/17)

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**Pending Motions:**

<b>Date filed</b>	<b>Party</b>	<b>Motion Name/Type</b>	<b>Status</b>
10/11/17	Plaintiff Open Source Security, Inc.	Motion for Partial Summary Judgment (defamation per se)	Hearing date set for December 14, 2017
10/31/17	Defendant Bruce Perens	Motion to Dismiss with Prejudice Pursuant to Fed. R. Civ. P. 12(b)(6) and Special Motion to Strike Pursuant to the California Anti-SLAPP Statue, Code of Civil Procedure Section 425.16	Hearing date set for December 14, 2017

**Anticipated Motions:**

Depending on the outcome of the parties' pending dispositive motions, the parties may file additional dispositive motions as appropriate. The parties also may file *Daubert* motions and motions *in limine*. In addition, the parties may file discovery letter briefs according to the procedure set forth in the Court's March 15, 2017 Standing Order. Should Plaintiffs seek discovery before the Court decides the parties' pending dispositive motions (see Discovery section below), Mr. Perens may seek a protective order staying discovery until after those motions are resolved, as appropriate.

**5. Amendment of Pleadings**

Plaintiffs do not anticipate the need to amend the pleadings at this time, however may seek leave to amend by the Court, if appropriate.

**6. Evidence Preservation**

The parties have reviewed the Guidelines Relating to the Discovery of Electronically Stored Information ("ESI Guidelines"), and confirm that the parties have met and conferred pursuant to Fed. R. Civ. P. 26(f) regarding reasonable and proportionate steps taken to preserve evidence relevant to the issues reasonably evident in this action. Each party represents that it has instituted reasonable document retention procedures so as to maintain any relevant documents, electronic or otherwise, or any other relevant electronically recorded material until this dispute is resolved.

**7. Disclosures**

The parties agree to exchange initial disclosures on November 22, 2017, as ordered by the Court pursuant to stipulation by the parties (ECF No. 15).



1 **8. Discovery**

2 **A. Timing, Scope, and Potential Phasing of Discovery**

3 No formal discovery has been completed at this time, and the parties do not agree as to the  
4 appropriate timing for the initiation of discovery and as to the appropriate scope of discovery. The  
5 parties agree that service of written discovery and other non-filed documents will be effective if served  
6 on the parties via e-mail.

7 **Plaintiffs' Statement:** Plaintiffs hold the view that discovery should be initiated as soon as possible  
8 and the scope of discovery should be limited to the issues in question which will assist the Court and a  
9 Jury whether Defendants are liable to the causes of action listed in the complaint. Plaintiffs will oppose  
10 any attempt by Defendants to engage in a fishing expedition and undue harassment by demanding  
11 unfettered access to Plaintiffs' business records or dealings.

12 Since this matter is limited to defamation based on Perens' statements, discovery should be limited to  
13 the information known to Perens, directly or indirectly through his purported reliable witnesses.  
14 Perens' fishing expedition should invite sanctions for unduly harassing Plaintiffs. Further, Plaintiffs  
15 contend Perens, being a professional (for profit) advisor of open source matters can exploit and  
16 financially benefit from any confidential discovery information between Plaintiffs and their customers.  
17 Plaintiffs seek the Court's guidance to device a mechanism that involves narrowly tailoring discovery  
18 requests to avoid any unintended consequences of the any disclosure.

19 **Mr. Perens's Statement:**

20 Mr. Perens believes that discovery should not commence until after the pending dispositive  
21 motions are resolved, should any cause of action remain in the case. First, Mr. Perens's motions may  
22 fully resolve the case. Second, Mr. Perens's anti-SLAPP and 12(b)(6) motions are based on  
23 fundamental legal defects in Plaintiffs' claims, not mere failure to provide sufficient supporting factual  
24 details—and regardless, it is Plaintiffs' burden to support their complaint without requiring additional  
25 discovery. Third, Plaintiff OSS has moved for summary judgment on its defamation per se claim,  
26 demonstrating that OSS does not believe there are factual disputes requiring discovery to dispose of  
27 that claim, and Plaintiffs' other claims depend on the same accused conduct. Fourth, should the case  
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1 proceed, it will be more efficient to pursue discovery after Mr. Perens has answered and/or  
2 counterclaimed, and considering any guidance the Court may provide in resolving the pending  
3 motions. Finally, Plaintiffs have been unable to identify any prejudice they would suffer if discovery is  
4 delayed, other than their desire to potentially shore up pleadings the Court may find deficient. Mr.  
5 Perens therefore believes that allowing discovery to proceed before his pending motions are decided  
6 would unnecessarily increase the fees and costs incurred by Mr. Perens and recoverable from Plaintiffs  
7 under California's anti-SLAPP law.

8 Mr. Perens does not believe that the Court should decide, as a matter of first impression,  
9 whether the Grsecurity agreement violates the GPLv2. If the Court does determine it must decide this  
10 issue, however, Mr. Perens expects to take discovery from OSS, Bradley Spengler, and third parties,  
11 on topics including, but not limited to: OSS's written and oral policies surrounding its Grsecurity  
12 product; the meaning of the GPLv2 and its provisions; whether the Grsecurity agreement's non-  
13 redistribution clause or other of Plaintiffs' practices violate the GPLv2; the effect of the non-  
14 redistribution clause on OSS's customers, including in their ability to redistribute software in the ways  
15 guaranteed by the GPLv2; Plaintiffs' alleged damages; Plaintiffs' bases for all its claims and  
16 allegations in the First Amended Complaint; and any defenses and counterclaims raised by Mr. Perens.

### 17 18 19 **B. Electronically Stored Information**

20 The parties have discussed entering into a stipulated e-discovery order and will negotiate in  
21 good faith to reach an agreement regarding the protocols for the collection and production of  
22 electronically stored information.

### 23 **C. Privilege Issues**

24 In accordance with Paragraph 8(a) of this Court's Model Stipulated Order Re: Discovery of  
25 Electronically Stored Information for Standard Litigation ("Model ESI Order") and Federal Rule of  
26 Evidence 502(d), the parties agree that the production of a privileged or work-product-protected  
27 document, whether inadvertent or otherwise, is not a waiver of privilege or protection from discovery

1 in this case or in any other federal or state proceeding. For example, the mere production of privileged  
2 or work-product-protected documents in this case as part of a mass production is not itself a waiver in  
3 this case or in any other federal or state proceeding. The parties further agree to confer regarding a  
4 procedure for addressing inadvertent disclosures of protected material.

5 The parties agree that communications solely between litigation counsel in this matter and their  
6 clients need not be listed on the parties' respective privilege logs.

#### 7 **D. Proposed Limitations on Discovery**

8 Apart from the dispute discussed in Paragraph 8.A above with respect to the timing of the  
9 initiation of discovery, the parties propose that the presumptive limits on discovery set forth in the  
10 Federal Rules of Civil Procedure apply.

#### 11 **E Protective Order**

12 The disclosure of confidential and proprietary information is likely to be necessary in this case;  
13 therefore the parties will meet and confer and attempt to reach agreement on a proposed stipulated  
14 protective order to be submitted to the Court for approval. To the extent the parties are unable to agree  
15 on a stipulated protective order, the parties will seek the Court's guidance on any disputed terms or  
16 issues.

#### 17 **9. Class Actions**

18 This action is not a class action.

#### 19 **10. Related Cases**

20 There are no related cases.

#### 21 **11. Relief**

##### 22 **Plaintiffs' Statement:**

23 Plaintiffs seek compensatory damages and punitive damages to be determined by a jury since  
24 damages are ongoing. At the very least, Plaintiffs seek compensatory damages for lost revenue and  
25 profits as a function of damage to Plaintiff's business reputation; diminution in the pecuniary value of  
26 Plaintiff's goodwill, administrative costs in connection with Plaintiff's efforts to monitor and  
27 counteract the negative publicity, and other pecuniary harm, including loss of potential customers, and  
28

1 the inability to hire a full-time software engineer to further enhance the security features in the  
2 Grsecurity® product due to implementation of a hiring freeze and divert its resources towards legal  
3 fees and unexpected costs of litigation especially at a time when Plaintiff Open Source Security, Inc.  
4 was geared towards expanding its business operation. Plaintiff Open Source Security also had to incur  
5 the extraneous expense to hire an independent contractor to monitor and counteract the negative  
6 publicity resulting due to the publication of the Postings which has further caused an expense of  
7 \$6,300. An updated amount of damages, including evidence thereof, will be presented during trial.  
8 Further, the court should award Plaintiffs reasonable attorneys' fees and costs for Perens' frivolous  
9 anti-SLAPP motion.

10 **Mr. Perens's Statement:**

11 Mr. Perens denies that Plaintiffs have been damaged or are entitled to relief. Mr. Perens  
12 requests that the Court enter judgment in his favor and against Plaintiffs as follows:

- 13 a) Dismissal with prejudice of the entire action;
- 14 b) An award of Mr. Perens's reasonable attorneys' fees and costs pursuant to the California  
15 anti-SLAPP statute (Cal. Code Civ. Proc. § 425.16), 28 U.S.C. § 1927, or as otherwise  
16 permitted by law; and
- 17 c) An award of any such other costs and further relief as the Court may deem just and proper.

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19 **12. Settlement and ADR**

20 The parties are amenable to ADR, including an early settlement conference before a magistrate  
21 judge. A phone conference regarding ADR scheduling is currently scheduled for November 28. The  
22 parties agree that ADR is unlikely to be productive prior to resolution of Mr. Perens's pending anti-  
23 SLAPP motion.

24 **13. Consent to Magistrate Judge for All Purposes**

25 All parties have consented to have a magistrate judge conduct all further proceedings, including  
26 trial and entry of judgment. (ECF Nos. 4, 13.)

1 **14. Other References**

2 The parties do not believe that this case is suitable for reference to binding arbitration, a special  
3 master, or the Judicial Panel on Multidistrict Litigation.

4 **15. Narrowing of Issues**

5 The parties have not identified any issues that can be narrowed or resolved by agreement at this  
6 time.

7 **16. Expedited Trial Procedure**

8 The parties do not believe that this case can be handled under the Expedited Trial Procedure of  
9 General Order No. 64, Attachment A.

10 **17. Scheduling**

11 The parties propose the following dates for expert disclosures, discovery cutoffs, briefing and hearing  
12 of pretrial motions, the pretrial conference, and trial.

Event	Plaintiffs' Proposal	Mr. Perens's Proposal
Deadline for Mr. Perens to file Answer to any complaint that survives the pending dispositive motions	No objection to Perens' proposal	15 days after denial (if any) of Mr. Perens's pending motions or after filing of Second Amended Complaint (if any)
Close of non-expert discovery	75 days before trial	120 days after filing of Answer
Initial expert disclosures and reports	75 days before trial	141 days after filing of Answer (21 days after close of non-expert discovery)
Rebuttal expert witness disclosures and reports	60 days before trial	162 days after filing of Answer (21 days after initial expert disclosures)
Reply expert witness disclosures and reports	45 days before trial	176 days after filing of Answer (14 days after rebuttal expert disclosures)
Close of expert discovery	75 days before trial	206 days after filing of Answer (30 days after reply expert disclosures)

Event	Plaintiffs' Proposal	Mr. Perens's Proposal
Deadline to file discovery letter briefs to the extent permitted	67 days before trial	213 days after filing of Answer (7 days after close of expert discovery)
Deadline to file dispositive motions and <i>Daubert</i> motions	45 days before trial	227 days after filing of Answer (21 days after close of expert discovery)
Hearing on dispositive motions and <i>Daubert</i> motions	As soon as possible, per the Court's schedule, after deadline to file dispositive motions	First Thursday at least 262 days after filing of Answer (35 days after filing)
Parties will serve, exchange and file their pretrial disclosures pursuant to Rule 26(a)(3)	30 days before trial	30 days before trial
Parties to serve any and all objections to any party's proposed evidence pursuant to Rule 26(a)(3) and Civ. L.R. 16-10(b)(11)	20 days before trial	20 days before trial
Pretrial conference	14 days before trial	14 days before trial
Start of trial	June 2018	February 2019

#### 18. Trial

Plaintiffs request a jury trial. The parties anticipate a 4-5 day trial based on the current scope of the case.

#### 19. Disclosure of Non-Party Interested Entities or Persons

The parties are unaware of any non-party persons, firms, partnerships, corporations, or other entities that either have a financial interest in the subject matter in controversy or in a party to the proceeding, or any other kind of interest that could substantially be affected by the outcome of the proceeding.

#### 20. Professional Conduct

All attorneys of record for the parties have reviewed the Guidelines for Professional Conduct for the Northern District of California.

#### 21. Other

None at this time.

1 Dated: November 22, 2017

ROHIT CHHABRA  
CHHABRA LAW FIRM, PC

2  
3  
4 By: /s/ Rohit Chhabra  
Rohit Chhabra  
5 Attorney for Plaintiffs Open Source Security, Inc.  
and Bradley Spengler

6  
7 Dated: November 22, 2017

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8  
9  
10  
11 By: /s/ Melody Drummond Hansen  
Melody Drummond Hansen  
12 Attorneys for Defendant Bruce Perens

13  
14 **ATTESTATION CLAUSE**

15 I, Rohit Chhabra, hereby attest in accordance with Local Rule 5-1(i)(3) that each signatory has  
16 concurred in the filing of this document.

17 Dated: November 22, 2017

O'MELVENY & MYERS LLP  
18 By: /s/ Rohit Chhabra  
Rohit Chhabra  
19 Attorney for Plaintiffs Open Source Security,  
20 Inc. and Bradley Spengler