

B O I E S , S C H I L L E R & F L E X N E R L L P

1999 HARRISON STREET* SUITE 900* OAKLAND, CA 94612* 510-874-1000 FAX 510-874-1460

March 4, 2012

Via Electronic Case Filing System

The Honorable Phyllis J. Hamilton
United States District Court
Northern District of California
1301 Clay Street, South Tower
3rd Floor
Oakland, CA 94612-5212

RE: Oracle USA, Inc., et al. V. SAP AG, et al., Case No. 07-CV-1658 PJH

Your Honor:

We write to update the Court on a recent scheduling development related to the Court's order dated February 28, 2012, in which the Court conditionally set a June 18, 2012 trial date in the *Oracle v. SAP* litigation.

In addition to the *DuPont* case set for trial on June 4, 2012, David Boies, Oracle's lead trial counsel in this case, is lead trial counsel in *Rincon EV Realty LLC, et al. v. CP III Rincon Towers, Inc., et al.*, SFSC Case No. CGC-10-496887 ("*Rincon*"). At a hearing on the afternoon of Friday, February 24, the court in the *Rincon* case set that matter for trial on June 25, 2012. Our firm had asked that trial be set for July 2; the adversary requested a different date; and the court chose June 25. None of the lawyers at our firm who are working on this case are involved in the *Rincon* matter (or vice versa), other than Mr. Boies. Mr. Boies was not present at the trial setting hearing, and did not learn of the result until later in the week of February 27. As a result, we did not bring the new conflict to this Court's attention in our February 24, 2012 submission. We regret this lack of coordination.

Although we will inform the *Rincon* court that a June 18 trial date has been set in this case, we do not know whether the *Rincon* court will adjust its trial schedule. As a result, Oracle finds itself in an even more difficult scheduling situation than it previously described to the Court, now including two separate trial conflicts for Mr. Boies, trial conflicts for Oracle's damages expert, the company's May/June trial in the Hewlett-Packard case, and possibly the company's and counsel's trial in the Google case. In addition to the actual and potential conflicts later in 2012 noted in our February 24 submission, we also note that trial has been set for July 23, 2012 in another case, *Capital One Financial Corporation v. John A. Kanas, et al.*, 1:11cv00750 (E.D. Va.), in which Mr. Boies is lead trial counsel. Accordingly, we respectfully

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request that this Court reconsider its February 28, 2012 order and set trial for the first date in 2013 in which lead trial counsel for SAP is available. In the alternative, we request that the Court treat Mr. Boies' *Rincon* trial in the same manner in which it has indicated it will treat his June *DuPont* trial. If so, we will promptly inform the Court if the *Rincon* trial date is changed, as well as keep the Court apprised of any changes in the status of the *DuPont* trial.

As the plaintiff, Oracle of course has an interest in having trial in this case go forward. Indeed, delaying trial would be contrary to Oracle's interest in promptly taking the steps antecedent to a favorable resolution of a long-standing dispute over serious civil and criminal misconduct. However, given the scheduling challenges posed and the significant demands of trial preparation, we simply seek the ability to reasonably prepare for this major trial and act responsibly to protect the best interests of our client, without burden to the court.

Sincerely yours,

/s/

Steven C. Holtzman
Counsel for Plaintiffs

cc: Tharan G. Lanier, Esq. (via ECF)
Jane Froyd, Esq. (via ECF)