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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

ORACLE USA, INC., *et al.*,

Plaintiffs,

v.

SAP AG, *et al.*,

Defendants.

CASE NO. 07-CV-01658 PJH (EDL)

**PLAINTIFFS' ADMINISTRATIVE
 MOTION TO EXTEND TRIAL DATE**

1 Pursuant to Local Rule 7-11,¹ Plaintiffs Oracle USA, Inc., Oracle International
2 Corporation and Siebel Systems, Inc. (“Plaintiffs” or “Oracle”) respectfully request that trial in
3 this matter, scheduled to commence on November 1, 2010, be continued to November 8, 2010.
4 Given the parties’ recent stipulation regarding trial time to be devoted to the presentation of
5 evidence and argument, starting the trial on November 8 should still permit the trial to conclude
6 within the original six-week period set aside by the Court.

7 The reason for Plaintiffs’ request is simple: their lead trial counsel, David Boies, will be
8 in trial in United States District Court for the Southern District of New York starting on October
9 18, 2010. *See* Declaration of Steven C. Holtzman in Support of Administrative Motion to
10 Extend Trial (“Holtzman Decl.”), ¶ 2 & Ex. 1. For reasons beyond Mr. Boies’ control, that trial
11 was recently confirmed to take place, and is scheduled to last until November 1 or even several
12 days beyond November 1. *See id.* Although Mr. Boies requires nearly no time between trials, it
13 will be physically impossible for him to be on both coasts at the same time.

14 Plaintiffs have met and conferred with Defendants regarding this request, explaining the
15 circumstances surrounding and reasons for the request, and asking that Defendants consent to
16 Plaintiffs’ request for the one-week continuance if nothing else as a matter of professional
17 courtesy. *See* Holtzman Decl., ¶ 3 & Ex. 2 (September 14, 2010 email from Steve Holtzman,
18 counsel for Plaintiffs, to counsel for Defendants). Plaintiffs further explained that given the
19 parties’ agreement to limit the presentation of evidence and argument to 36 hours per side,
20 moving the trial start date to November 8 would still result in the trial being completed within
21 the six-week period originally allotted by the Court for the trial, therefore presumably not
22 disrupting any long-planned schedules or resulting in any prejudice. *Id.*

23 While stating that a one-week continuance is ordinarily “immaterial,” Defendants have
24

25 ¹ *See* Dkt. No. 84 (Court’s Case Management and Pretrial Order) at paragraph E (“No provision
26 of this order may be changed except by written order of this court upon its own motion or upon
27 motion of one or more parties made pursuant to Civil. L. R. 7-11 with a showing of good cause.
28 Parties may file a formal brief, but a letter brief will suffice. The requesting party shall serve the
opposing party on the same day the motion is filed and the opposing party shall submit a
response as soon as possible but no later than three days after service.”).

1 declined to agree to Plaintiffs’ request. *See* Holtzman Decl., ¶ 4 & Ex. 3 (September 16, 2010
2 email from Greg Lanier, counsel for Defendants, to counsel for Plaintiffs). Defendants based
3 their objection to the request on their concern that (1) moving the trial back a week would
4 inconvenience SAP executives by disrupting their business responsibilities at “the very busy end
5 of the calendar year”; and (2) had Plaintiffs raised the issue during the settlement conference
6 with Magistrate Judge Spero on September 7, doing so would have affected Defendants’
7 willingness to agree to the 36-hour stipulation. *Id.*

8 Neither objection has merit. As explained above, until September 7 Defendants and
9 Plaintiffs both had to plan for a trial lasting six weeks starting November 1, 2010. With the 36-
10 hour stipulation in place, trial will be complete within this time period, thereby altering no long-
11 standing plans.

12 Moreover, as Plaintiffs have reminded Defendants, Plaintiffs in fact *did* raise the issue on
13 September 7, resulting in a change to the trial streamlining stipulation being negotiated that day.
14 *See* Holtzman Decl., ¶¶ 5-6 & Exs. 4 & 5 (September 17, 2010 and September 18, 2010 emails
15 between counsel). Specifically, whereas the draft stipulation prior to September 7 specifically
16 stated that “Trial remains on the currently scheduled start date but shortened. . . ,” on September
17 7 Plaintiffs proposed that the stipulation be changed to read simply “The length of trial is
18 shortened”² Defendants agreed to this language and signed the stipulation in that form.³
19 *See* Holtzman Decl., ¶ 7 & Ex. 6. As Plaintiffs have subsequently reminded Defendants, in
20 addition to the discussion with Magistrate Judge Spero on the subject, this specific change to the
21 language of the stipulation made clear that a November 1 start date was not acceptable to

22
23 ² In separate discussions with Magistrate Judge Spero prior to making this change, Plaintiffs
24 stated they want to make the request more explicit in the draft, but Magistrate Judge Spero
25 requested that they not do so, on the grounds that the actual trial start date was of course up to
the Court. *See* Holtzman Decl., ¶ 5 & Ex. 4 (September 17, 2010 email from Steve Holtzman,
counsel for Plaintiffs, to counsel for Defendants).

26 ³ Paragraph 3 of the stipulation does refer to “the trial scheduled for November 1, 2010,” *see*
27 Holtzman Decl., ¶ 7 & Ex. 6, but that is a recitation of the current schedule, not an agreement
that trial would “remain” on that date, which had been included in earlier drafts but was deleted
during the day on September 7.

1 Plaintiffs. *See* Holtzman Decl., ¶¶ 5-6 & Exs. 4 & 5 (September 17, 2010 and September 18,
2 2010 emails between counsel). Defendants have refused to reconsider their position.

3 For the above stated reasons, Oracle respectfully requests the Court to grant its
4 administrative motion to continue trial for one week.

5
6 DATED: September 20, 2010

BOIES, SCHILLER & FLEXNER LLP

7 By: /s/ Steven C. Holtzman
8 Steven C. Holtzman
9 Attorneys for Plaintiffs
Oracle USA, Inc., Oracle International Corp.,
and Siebel Systems, Inc.

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