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22 UNITED STATES DISTRICT COURT
 23 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

24 ORACLE USA, INC., *et al.*,
 25 Plaintiffs,
 26 v.
 27 SAP AG, *et al.*,
 28 Defendants.

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

**DECLARATION OF STEVEN C.
 HOLTZMAN IN SUPPORT OF
 PLAINTIFFS' ADMINISTRATIVE
 MOTION TO EXTEND TRIAL DATE**

Case No. 07-CV-01658 PJH (EDL)

DECLARATION OF STEVEN C. HOLTZMAN IN SUPPORT OF
 ADMINISTRATIVE MOTION TO EXTEND TRIAL DATE

1 I, Steven C. Holtzman, declare as follows:

2 1. I am an attorney licensed to practice law in the State of California and am a
3 partner at Boies, Schiller & Flexner LLP, counsel of record for plaintiffs Oracle USA, Inc.,
4 Oracle International Corporation, and Siebel Systems, Inc. (collectively, “Plaintiffs” or
5 “Oracle”). I have personal knowledge of the facts stated within this Declaration and could testify
6 competently to them if required. I make this declaration in support of Plaintiffs’ Administration
7 Motion to Extend Trial Date, submitted pursuant to Civil Local Rule 7-11 and this Court’s May
8 5, 2008 Case Management and Pretrial Order (Dkt. No. 84).

9 2. Attached as **Exhibit 1** is a true and correct copy of an Order in of the United
10 States District Court, Southern District of New York, in the matter of *Terra Firma Investments,*
11 *et al. v. Citigroup, et al.*, 09-cv-10459-JSR, setting trial for October 18, 2010. (Dkt. No. 98, filed
12 September 15, 2010).

13 3. Attached as **Exhibit 2** is a true and correct copy of a September 14, 2010 email
14 from myself to Scott Cowan, counsel for Defendants. The email states:

15 I wanted to touch base with regard to the trial start date. We’ve requested that
16 you agree to a start date of November 8 because David Boies has another trial that
17 is now expected to last until or even shortly after November 1. As stipulated last
18 week, the trial will still conclude within the originally scheduled six week
19 window. Schedules presumably have long been set based on the six-week trial
20 period, and we are not departing from that.

21 Even if you do not agree with this reasoning, I would hope you would reconsider
22 your position if nothing else as a matter of professional courtesy to a fellow
23 litigator.

24 4. Attached as **Exhibit 3** is a true and correct copy of a September 16, 2010 email
25 from Greg Lanier, counsel for Defendants, to myself. The email states:

26 [W]e’ve now considered Plaintiffs’ request to delay the trial start date and have
27 discussed it with our clients. Although a one week trial continuance in most
28 instances would be considered immaterial, unfortunately, in this instance,
Defendants do not agree to the request. The trial start date has been set for
November 1 for more than a year, and we, our clients, potential witnesses, trial
support teams, etc., have made a variety of plans based on that date. Additionally,
SAP intends to commit executive level resources to the trial who have significant
business responsibilities. Given that those executives cannot run back to their
offices each day after trial (like presumably most of Plaintiffs key executives will
be able to do), the start and end dates for trial are critically important to them and

1 to the running of SAP's day to day business. Moreover, SAP's September 7
2 agreement to the 36 hours per side time limit for trial testimony and argument was
3 motivated not only by having a shorter trial, but also one that ended earlier as
4 against the very busy end of the calendar year. Had Plaintiffs request to postpone
5 the start of trial been made when the parties were together on September 7 (and
6 we can't understand why it was not, as we assume trial calendars have been
7 known for a while), it would have affected SAP's position on the length of trial,
8 which was obviously a material point of the parties' stipulation.

9 We appreciate that Mr. Boies has a busy trial calendar and do not intend to be
10 discourteous, but unfortunately at this late date, Defendants cannot agree to your
11 request. Please let us know if there is any additional information you would like
12 us to consider.

13 5. Attached as **Exhibit 4** is a true and correct copy of a September 17, 2010 email
14 from myself to Greg Lanier in response to Greg Lanier's email attached as Exhibit 3. The email
15 states in part:

16 [Plaintiffs] specifically raised [the issue] with Judge Spero, and our recollection is
17 that some of you were in the room when we did. And as we were making our
18 final revisions to the stipulation while Judge Spero was meeting with you, we
19 specifically drafted an edit that would provide for a possible later start date.
20 When Judge Spero reviewed our draft before bringing it to you, he specifically
21 asked us to take it out because he didn't want to step on Judge Hamilton's toes
22 and because he said SAP was on notice of our desire based on the preceding
23 conversation. At his request, we removed it from the draft and decided to return
24 to the issue separately, which we did on the 13th. Particularly in this light, I
25 would again hope you would reconsider, but in the absence of that, we are
26 preparing to request the one-week deferral from Judge Hamilton.

27 6. Attached **Exhibit 5** is a true and correct copy of a September 18, 2010 email from
28 myself to Greg Lanier, further explaining the points made in Exhibit 4. The email states:

While you continue to re-check with your client, I want to make sure I was
sufficiently clear in writing yesterday that we had understood you were on notice
of our desire to move the trial start date, and that we had removed the language
from the draft stipulation before signing.
Paragraph 8 of the draft we had been working from up until the negotiations on
September 7 specifically stated that "Trial remains on the currently scheduled
start date but shortened. . . ." After conferring with Judge Spero, we removed that
language in what we gave to you to review and sign. Paragraph 8 of the final
stipulation accordingly reads simply "The length of trial is shortened. . . ."
In addition to the discussion we believe had occurred while some of you were in
the room, this change made clear that we were not okay with November 1 as the
start date. I had thought that was clear from my previous message, but it has been
suggested to me that with everything going on you might not have recalled that or
focused on it clearly given my previous more general reference.

7. Attached as **Exhibit 6** is a true and correct copy of the stipulation regarding
streamlining the case for trial that the parties signed on September 7, 2010.

1 I declare under penalty of perjury under the laws of the United States that the
2 foregoing facts are true and correct, and that this Declaration was executed on September 20,
3 2010, in Oakland, CA.

4 /s/ Steven C. Holtzman
5 Steven C. Holtzman
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