IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

VALTRUS INNOVATIONS LTD,	§	CASE NO. 2:24-CV-00021
	§	
Plaintiff,	§	
	§	**JURY TRIAL DEMANDED**
v.	§	
	§	
SAP AMERICA, INC. and SAP, SE	§	
Defendants.	§	
	§	
	§	

PLAINTIFFS' STATEMENT REGARDING VALTRUS II (CASE NO. 2:24-CV-533-JRG)

In denying SAP's motion to dismiss this case for lack of Art. III standing, the Court requested that Valtrus and KPI (collectively, "Valtrus") either dismiss the co-pending (but stayed) *Valtrus II*[1] case against SAP, or otherwise explain why *Valtrus II* should remain pending. *See* Dkt. 83 at 16 (Sealed Order). In the interest of judicial and litigant economy, Valtrus respectfully requests that the Court permit the *Valtrus II* case to remain pending for the following reasons and suggests that consolidating the two cases would further increase efficiency.

A challenge to Art. III standing is unique in that it need not be preserved, and can be raised at any time, even on appeal, and even *sua sponte* by a court. *See Cadle Co. v. Neubauer*, 562 F.3d 369, 374 (5th Cir. 2009); *see also Pandrol USA, LP v. Airboss Railway Products, Inc.*, 320 F.3d 1354, 1367 (Fed. Cir. 2003). Further, Art. III standing must exist at the outset of a case and be maintained throughout. *See Whole Woman's Health v. Jackson*, 23 F.4th 380, 389 (5th Cir. 2022); *see also Paradise Creations, Inc. v. UV Sales, Inc.*, 315 F.3d 1304, 1308 (Fed. Cir. 2003). Valtrus is thus concerned that dismissing the *Valtrus II* case now could lead to significant wasted resources

[1] *See Valtrus Innovations Ltd. and Key Patent Innovations Ltd. v. SAP Am., Inc., et al.* Case No. 2:24- cv-533-JRG (E.D. Tex. July 12, 2024) ("*Valtrus II*").

for the parties and the judiciary should SAP continue to challenge Art. III standing in *Valtrus I*, particularly after a verdict is reached.

SAP has already demonstrated its unwillingness to accept the Court's ruling on standing. It recently informed Valtrus that it intends to move for reconsideration of the Court's Order (Dkt. 83) in short order. With the *Valtrus II* case already pending before this Court, the Court is able to best create efficiencies with the resources and efforts expended in *Valtrus I*. Indeed, the Court could consolidate the two cases, thereby mooting any Art. III concerns and ending SAP's seemingly endless interest in litigating this issue (and SAP's claim-splitting arguments in *Valtrus II*). *See St. Bernard Gen. Hosp., Inc. v. Hosp. Serv. Ass'n. of New Orleans, Inc.*, 712 F.2d 978, 989 (5th Cir. 1983) ("Consolidating actions in a district court is proper when the cases involve common questions of law and fact, and the district judge finds that [consolidation] would avoid unnecessary costs or delay."); *Walton v. Eaton Corp.*, 563 F.2d 66, 71 (3d Cir. 1977) ("When a court learns that two possibly duplicative actions are pending on its docket, consolidation may well be the most administratively efficient procedure."); *Dupont v. S. Pac. Co.*, 366 F.2d 193, 195 (5th Cir. 1966) (courts "are urged to make good use of Rule 42(a)" to "expedite the trial and eliminate unnecessary repetition and confusion.").

This is true even where the claims in the two cases are identical. *See Briggs v. Edwards*, 2013 WL 5960676, at *3 (E.D. La. Nov. 6, 2013) ("even though the claims in the second suit are nearly identical, the Court finds that . . . consolidation of the claims is a sufficient remedy.").[2] The

[2] *See also Aldridge v. Cain*, 2022 WL 22258415, at *3 (S.D. Miss. Sept. 27, 2022) ("Now that these cases have been consolidated, the claim splitting issue should be moot."); *Matthews Int'l Corp. v. Lombardi*, 2020 WL 1309399, at *2 (W.D. Pa. Mar. 19, 2020) ("consolidation is an appropriate remedy to the problem of claim splitting. In light of the infancy of both *Matthews I* and *Matthews II* and the overlapping factual and legal issues between the cases, the Court will consolidate these cases to promote judicial efficiency.").

claims in *Valtrus I* and *Valtrus II* are identical; the only potential difference is the damages period, which can be dealt with in expert reports and with the jury verdict form, and judgment as to both cases could be entered.

Having the *Valtrus II* case either consolidated or stayed avoids the potential of a complete re-start on the risk, however minimal, that an appellate court reverses this Court's decision denying SAP's motion to dismiss. The Court and the parties are best served litigating the merits and moving the dispute towards trial, which is most achievable by keeping *Valtrus II* on the docket and potentially consolidating it with *Valtrus II*.

In sum, whether consolidated or stayed, the *Valtrus II* case protects the verdict from an unnecessary and expensive do-over should SAP successfully challenge the viability of this case on Art. III grounds.

Date: November 15, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on November 15, 2024 the foregoing document was served on all counsel of record who have consented to electronic service.

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