1   BINGHAM MCCUTCHEN LLP
    DONN P. PICKETT (SBN 72257)
2   GEOFFREY M. HOWARD (SBN 157468)
    HOLLY A. HOUSE (SBN 136045)
3   ZACHARY J. ALINDER (SBN 209009)
    BREE HANN (SBN 215695)
4   Three Embarcadero Center
    San Francisco, CA 94111-4067
5   Telephone: 415.393.2000
    Facsimile: 415.393.2286
6   donn.pickett@bingham.com
    geoff.howard@bingham.com
7   holly.house@bingham.com
    zachary.alinder@bingham.com
8   bree.hann@bingham.com

9   DORIAN DALEY (SBN 129049)
    JENNIFER GLOSS (SBN 154227)
10 500 Oracle Parkway, M/S 5op7
    Redwood City, CA 94070
11 Telephone: 650.506.4846
    Facsimile: 650.506.7144
12 dorian.daley@oracle.com
    jennifer.gloss@oracle.com
13
    Attorneys for Plaintiffs
14 Oracle USA, Inc., Oracle International Corporation,
    Oracle EMEA Limited, and Siebel Systems, Inc.

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16   UNITED STATES DISTRICT COURT

17   NORTHERN DISTRICT OF CALIFORNIA

18   OAKLAND DIVISION

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20   ORACLE USA, INC., *et al.*,   No. 07-CV-01658 PJH (EDL)

21   Plaintiffs,   **[PROPOSED] ORDER DENYING**
          v.   **DEFENDANTS' MOTION FOR**
22   **PARTIAL SUMMARY JUDGMENT**
     SAP AG, *et al.*,
23   Date: May 5, 2010
              Defendants.   Time: 9:00 am
24   Place: 3rd Floor, Courtroom 3
                                              Judge: Hon. Phyllis J. Hamilton
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                                                          07-CV-01658 PJH (EDL)

     [PROPOSED] ORDER DENYING DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT

1   On May 5, 2010, the Court held a hearing on the Motion for Partial Summary

2 Judgment brought by Defendants SAP AG, SAP America, Inc., and TomorrowNow, Inc.

3 (collectively "Defendants"), pursuant to Federal Rule of Civil Procedure 56 and Civil Local

4 Rules 7-2 - 7-5 and 56-1.

5   Having reviewed the parties' papers and carefully considered their arguments,

6 evidence and relevant legal authority, and good cause appearing, the Court hereby **DENIES**

7 Defendants' Motion for Partial Summary Judgment as follows:

8   **Plaintiff Oracle EMEA Ltd.**

9   Plaintiff Oracle OEMEA Ltd. ("OEMEA") brings four California claims against

10 Defendants. Oracle's other plaintiffs bring California claims in addition to two federal claims

11 for copyright infringement and for violation of the Computer Fraud and Abuse Act. There is no

12 dispute that Defendants twice admitted in their Answers to Oracle's Third and Fourth Amended

13 Complaints that this Court has supplemental jurisdiction over OEMEA and OEMEA's pendent

14 state law claims under 28 U.S.C. § 1367. There is also no dispute that Defendants twice

15 admitted that "a substantial part of the events giving rise to the dispute occurred" in California.

16 Moreover, Oracle has established extensive California conduct that relates to OEMEA's claims.

17 Because there is no genuine dispute that OEMEA has suffered from California-based wrongful

18 conduct, OEMEA's claims are not wholly extraterritorial as Defendants allege, and OEMEA's

19 claims are properly before this Court. *See, e.g.*, *Solid Host, NL v. Namecheap, Inc.*, 652 F. Supp.

20 2d 1092, 1122 n.67 (C.D. Cal. 2009). Defendants' due process argument fails for these same

21 reasons.

22   Accordingly, Defendants' Motion for Partial Summary Judgment as to OEMEA is

23 **DENIED**.

24   **Oracle's Lost Profits Claims**

25   Defendants next seek a ruling that, as matter of law, an Oracle entity is not

26 permitted to recover the lost profits of an affiliated plaintiff or non-plaintiff entity. However, for

27 a given cause of action, no Oracle plaintiff has asserted a claim to another entity's lost profits,

28 and thus this Court declines to issue the advisory opinion sought by Defendants' Motion. *United*

1 *States v. Alpine Land & Reservoir Co.*, 887 F.2d 207, 214 (9th Cir. 1989) ("[C]ourts should not

2 render advisory opinions upon issues which are not pressed before the court, precisely framed

3 and necessary for decision."); *Sun Microsystems Inc. v. Hynix Semiconductor Inc.*, 608

4 F. Supp. 2d 1166, 1206 (N.D. Cal. 2009) (declining, on summary judgment, to "conclusively

5 decide [the] legal impropriety" of a theory of liability that "defendants presuppose[d]" was being

6 asserted by plaintiffs).

7   For the same reason, Defendants' Motion for Partial Summary Judgment seeking

8 an advisory opinion on lost profits of non-plaintiff entities is also **DENIED**.

9   **<u>Recovery of Saved Development Costs</u>**

10   Defendants' next Motion relates to Oracle's use of "saved development costs" in

11 support of its damages claims.

12   Oracle has confirmed that, for its state law claims, Oracle seeks to recover saved

13 development costs only under its unjust enrichment/restitution claim. Under California law,

14 Oracle may recover saved development costs on a theory of unjust enrichment/restitution. *Ajaxo,*

15 *Inc. v. E*Trade Group, Inc.*, 135 Cal. App. 4th 21 (2005). This Court declines to issue an

16 advisory opinion regarding a party's ability to seek saved development costs pursuant to Oracle's

17 other California law claims, as Oracle does not seek them. *Alpine Land & Reservoir Co.*, 887

18 F.2d at 214.

19   Defendants also reargue whether saved development costs are relevant to a "value

20 of use" measurement of actual damages pursuant to Oracle's copyright claim. This issue was

21 previously argued, considered, and decided by this Court's January 28, 2010 Order on

22 Defendants' previous Motion for Partial Summary Judgment Regarding Plaintiffs' Hypothetical

23 License Damages Claim. Defendants have not sought reconsideration of that Order pursuant to

24 Civil Local Rule 7-9, nor could Defendants meet Local Rule 7-9's requirement for

25 reconsideration. Using the same arguments and authorities, Defendants reargue their previous

26 Motion without moving for reconsideration; this is improper and sanctionable. Civ. L.R. 7-9(c).

27   Defendants' Motion for Partial Summary Judgment regarding "saved

28 development costs" is **DENIED**.

[PROPOSED] ORDER DENYING DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT

1	<u>**CDAFA and Trespass to Chattels Claims**</u>
2	Defendants next argue that Oracle is not entitled to recover damages under its
3	California Computer Data Access and Fraud Act claim ("CDAFA"), pursuant to Cal. Penal Code
4	§ 502, and its trespass to chattels claims, because Defendants claim that Oracle has not disclosed
5	calculations for these claims. While styled as a Rule 56 motion, this appears to be an improper
6	and unsubstantiated motion for preclusion sanctions under Federal Rule of Civil Procedure 37.
7	*Cf. Hsieh v. Peake*, No. 06-5281, 2008 U.S. Dist. LEXIS 23649, at *59-60 (N.D. Cal. Mar. 25,
8	2008) (finding "an opposition to a motion for summary judgment is not a proper place for a Rule
9	37 motion," that "[i]n any event, a Rule 37 motion must be filed as a separate motion, and in
10	accordance with the local rules regarding the filing of motions," and that "any Rule 37 motion
11	should have been directed to the magistrate judge to whom the court referred all discovery
12	disputes). Moreover, the Court finds that Oracle has adequately quantified all of the damages it
13	seeks under these claims, as set forth its numerous written discovery responses, initial
14	disclosures, Fed. R. Civ. P. 30(b)(6) testimony, and its expert damages report. Thus, even had
15	Defendants brought a properly noticed Rule 37 motion before the assigned discovery magistrate,
16	Defendants could claim no prejudice.
17	Defendants' additional argument that any damages recoverable under the CDAFA
18	are limited to "investigation costs" is also unfounded. The legislative history of the CDAFA
19	reveals that the 2000 amendments cited by Defendants were intended to expand the civil
20	remedies available under the statute, not to limit them. *See* Cal. Bill Analysis, A.B. 2727
21	Assem., 8/07/2000 (intent is to "expand civil remedies available for computer crimes"). Based
22	on this and the other legislative history and legal authorities Oracle cites, the Court finds that the
23	CDAFA envisions "compensatory damages" to include "the amount that will compensate for all
24	the detriment proximately caused," including lost profits. Cal. Civ. Code § 3333; *see Fibreboard*
25	*Paper Prods. Corp. v. East Bay Union of Machinists*, 227 Cal.App.2d 675, 702 (1964).
26	Defendants' Motion for Partial Summary Judgment related to Oracle's trespass to
27	chattels and CDAFA claims thus is **DENIED**.
28	**IT IS SO ORDERED**.

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Dated: _____, 2010   _____

3   Hon. Phyllis J. Hamilton
                                                    United States District Court Judge
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[PROPOSED] ORDER DENYING DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT