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16	UNITED STATES DIS	STRICT COURT
17	NORTHERN DISTRICT	OF CALIFORNIA
18	OAKLAND D	IVISION
19		
20	ORACLE USA, INC., et al.,	No. 07-CV-01658 PJH (EDL)
21	Plaintiffs, v.	[PROPOSED] ORDER DENYING DEFENDANTS' MOTION FOR
22		PARTIAL SUMMARY JUDGMENT
23	SAP AG, et al.,	Date: May 5, 2010
24	Defendants.	Time:9:00 amPlace:3rd Floor, Courtroom 3
		Judge: Hon. Phyllis J. Hamilton
25		
26		
27		
28		
		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 07-CV-01658 PJH (EDL)	

States v. Alpine Land & Reservoir Co., 887 F.2d 207, 214 (9th Cir. 1989) ("[C]ourts should not
 render advisory opinions upon issues which are not pressed before the court, precisely framed
 and necessary for decision."); *Sun Microsystems Inc. v. Hynix Semiconductor Inc.*, 608
 F. Supp. 2d 1166, 1206 (N.D. Cal. 2009) (declining, on summary judgment, to "conclusively
 decide [the] legal impropriety" of a theory of liability that "defendants presuppose[d]" was being
 asserted by plaintiffs).

For the same reason, Defendants' Motion for Partial Summary Judgment seeking
an advisory opinion on lost profits of non-plaintiff entities is also **DENIED**.

9

Recovery of Saved Development Costs

10 Defendants' next Motion relates to Oracle's use of "saved development costs" in
11 support of its damages claims.

Oracle has confirmed that, for its state law claims, Oracle seeks to recover saved
development costs only under its unjust enrichment/restitution claim. Under California law,
Oracle may recover saved development costs on a theory of unjust enrichment/restitution. *Ajaxo*, *Inc. v. E*Trade Group, Inc.*, 135 Cal. App. 4th 21 (2005). This Court declines to issue an
advisory opinion regarding a party's ability to seek saved development costs pursuant to Oracle's
other California law claims, as Oracle does not seek them. *Alpine Land & Reservoir Co.*, 887
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**.

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CDAFA and Trespass to Chattels Claims

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

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.

