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18 TOMORROWNOW, INC.

19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA
21 SAN FRANCISCO DIVISION

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

CASE NO. 07-CV-1658 PJH (EDL)

**[REVISED PROPOSED] ORDER
GRANTING DEFENDANTS' FRCP
12(B)(1) AND 12(B)(6) MOTION TO
DISMISS PLAINTIFFS' CLAIMS FOR
COPYRIGHT INFRINGEMENT,
INTERFERENCE WITH
PROSPECTIVE ECONOMIC
ADVANTAGE, BREACH OF
CONTRACT, UNFAIR COMPETITION,
AN ACCOUNTING, AND UNJUST
ENRICHMENT**

1 Having considered Defendants' FRCP 12(b)(1) and 12(b)(6) Motion to Dismiss Plaintiffs'
2 Claims for Copyright Infringement, Interference with Prospective Economic Advantage, Breach
3 of Contract, Unfair Competition, An Accounting, and Unjust Enrichment ("Motion to Dismiss"),
4 supporting declaration of Tharan Gregory Lanier, and exhibits attached thereto, as well as
5 Plaintiffs' opposition and Defendants' reply papers and such argument as this Court deemed
6 necessary,

7 IT IS HEREBY ORDERED THAT Defendants' motion is GRANTED, as follows:

8 **Procedural Matters**

9 Defendants properly have brought their motion to dismiss J.D. Edwards Europe Limited's
10 ("JDEE") copyright infringement claim pursuant to Rule 12(b)(1) of the Federal Rules of Civil
11 Procedure. *See e.g., O'Mahony v. Accenture Ltd.*, 537 F. Supp. 2d 506, 509 (S.D.N.Y. 2008);
12 *Williams v. Sugar Hill Music Publishing, Ltd.*, No. C 05-03155 (MEJ), 2006 WL 1883350, at *9
13 (N.D. Cal. July 7, 2006). Further, the Parties correctly agree that this Court's consideration of the
14 exhibits referenced in support of Defendants' motion to dismiss the copyright claims of JDEE and
15 Oracle Systems Corporation ("OSC"), as well as Plaintiffs' breach of contract claims, is proper,
16 regardless of whether this Court considers Defendants' motion under Rule 12(b)(1) or Rule
17 12(b)(6), because these exhibits have been incorporated by reference into Plaintiffs' Third
18 Amended Complaint. *See Parrino v. FHP, Inc.*, 146 F.3d 699, 706 (9th Cir. 1998).

19 **Copyright Infringement**

20 • JDEE's copyright claim is DISMISSED. Defendants argued that this Court lacks
21 subject matter jurisdiction over JDEE's copyright infringement claims because they are based
22 solely on non-U.S. rights. The Court agrees. Federal copyright laws "do not have extraterritorial
23 application" and apply only to alleged acts of infringement that occur within the United States.
24 *See Subafilms, Ltd. v. MGM-Pathe Comm'ns Co.*, 24 F.3d 1088, 1090 (9th Cir. 1994). The only
25 agreement under which JDEE possesses any exclusive rights in the copyrights at issue in this case
26 limits JDEE's rights to Europe, the Middle East, and Africa. Because JDEE has no rights in the
27 United States, there can be no infringement of JDEE's rights that occur within U.S. borders.
28 Therefore, JDEE's copyright infringement claim does not arise under the Copyright Act, and this

1 Court lacks subject matter jurisdiction to hear JDEE's claim. Because there is no set of facts that
2 Plaintiffs could include in an amended complaint that would provide this Court with subject
3 matter jurisdiction over JDEE's copyright claim, amendment would be futile. *See Cahill v.*
4 *Liberty Mut. Ins. Co.*, 80 F.3d 336, 338-39 (9th Cir. 1996). Thus, this Court's dismissal of
5 JDEE's copyright infringement claim shall be WITHOUT LEAVE TO AMEND.

- 6 • Oracle System Corporation's ("OSC") copyright claim is DISMISSED.

7 Defendants argued that OSC's copyright claims should be dismissed because OSC lacks standing
8 to sue for copyright infringement. The Court agrees. Only copyright owners and exclusive
9 licensees of a copyright may enforce a copyright or license. *See Sybersound Records, Inc. v.*
10 *UAV Corp.*, 517 F.3d 1137, 1144 (9th Cir. 2008). Plaintiffs do not allege that OSC is or ever has
11 been the owner or exclusive licensee of any of the copyrights at issue. On that basis alone, the
12 Court finds that OSC lacks standing to sue for copyright infringement. Furthermore, the Court
13 notes that transfers of the right to sue for accrued infringement claims must be express, and do not
14 automatically transfer with the copyrights that gave rise to those claims. *See Co-opportunities,*
15 *Inc. v. Nat'l Broadcasting Co., Inc.*, 510 F. Supp. 43, 46 (N.D. Cal. 1981). Because OSC never
16 received an express assignment of the right to sue for past infringement, it lacks the right to sue
17 for such accrued causes of action. Further, Plaintiffs cannot amend their complaint to allege that
18 OSC has standing to sue for copyright infringement because the only inter-company agreements
19 relevant to the issue of OSC's copyright standing confirm that OSC is not and never has been an
20 owner or exclusive licensee of the copyrights at issue. Therefore, dismissal of OSC's copyright
21 claim shall be WITHOUT LEAVE TO AMEND because amendment would be futile.

22 **Preemption**

23 Plaintiffs' claims for intentional and negligent interference with prospective economic
24 advantage, breach of contract, unfair competition, and an accounting are DISMISSED to the
25 extent that Plaintiffs base these claims on alleged acts of copyright infringement. Defendants
26 argued, and Plaintiffs conceded, that Plaintiffs base their interference, breach of contract, unfair
27 competition, and accounting claims in large part on alleged copyright infringement. The Court
28 agrees. To the extent that these claims are based on alleged acts of copyright infringement, they

1 are dismissed as preempted. *See* 17 U.S.C. § 301(a). These allegations of copyright infringement
2 are eliminated as the bases of Plaintiffs' state law claims. This Court's dismissal of Plaintiffs'
3 claims for intentional and negligent interference with prospective economic advantage, breach of
4 contract, unfair competition, and an accounting is WITHOUT LEAVE TO AMEND to the extent
5 of preemption because amendment to reassert those allegations would be futile. *See Idema v.*
6 *Dreamworks*, 162 F. Supp. 2d 1129, 1193 (C.D. Cal. 2001).

7 **Breach of Contract**

8 Plaintiffs' breach of contract claims are DISMISSED. Defendants argued that Plaintiffs'
9 claim for breach of contract should be dismissed in its entirety for failure to state a claim because
10 Defendants are not parties to the alleged contracts. The Court agrees. The plain language of the
11 asserted contracts contemplates only customers with an existing agreement with an Oracle entity
12 as offerees with the power to accept the terms of the contracts. Defendants did not and could not
13 agree to the terms of the asserted contracts because Defendants are not within the class of
14 intended offerees of the contracts. *See Ott v. Home Savings & Loan Ass'n.*, 265 F.2d 643, 646
15 (9th Cir. 1958). Thus, Defendants are not, and cannot be, parties to the asserted contracts, and
16 Plaintiffs have failed to state a claim of breach of contract against Defendants. Amendment of
17 Plaintiffs' claim to allege that Defendants are parties to the asserted contracts would contradict
18 Plaintiffs' current allegations and would be futile. Thus, this Court's dismissal of Plaintiffs'
19 breach of contract claims is WITHOUT LEAVE TO AMEND.

20 **Unjust Enrichment**

21 Plaintiffs' claim for unjust enrichment/restitution is DISMISSED. Defendants argued that
22 Plaintiffs' claims for unjust enrichment should be dismissed because unjust enrichment is not a
23 legally cognizable claim. The Court agrees. There is no cause of action in California for unjust
24 enrichment. *See Melchior v. New Line Prods., Inc.*, 106 Cal. App. 4th 779, 793 (2003); *McBride*
25 *v. Boughton*, 123 Cal. App. 4th 379, 387 (2004); *Enreach Tech., Inc. v. Embedded Internet Solns.,*
26 *Inc.*, 403 F. Supp. 2d 968, 976 (N.D. Cal. 2005). Further, Plaintiffs have not stated a claim for
27 restitution under a quasi-contract theory that could proceed under the label "unjust enrichment."
28 Plaintiffs' ninth cause of action seeks damages based on their breach of contract and state law tort

1 claims. However, a claim for restitution seeks damages in lieu of breach of contract and tort
2 damages. See *McBride*, 123 Cal. App. 4th at 388. Plaintiffs' ninth cause of action for unjust
3 enrichment/restitution thus fails to state a claim. However, Plaintiffs are granted LEAVE TO
4 AMEND their complaint to properly plead a claim for restitution.

5 IT IS HEREBY FURTHER ORDERED THAT: Plaintiffs shall have ___ days from the
6 issuance of this order to submit an amended complaint consistent with this order. In so doing,
7 Plaintiffs shall avoid re-pleading alleged copyright infringement as the basis for Plaintiffs'
8 economic interference, unfair competition, and accounting claims. Defendants shall have ___
9 days from the filing of Plaintiffs' Fourth Amended Complaint to respond.

10 **IT IS SO ORDERED.**

11 DATED: _____

12 By: _____
13 Hon. Phyllis J. Hamilton

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