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SAP AG, SAP AMERICA, INC., and
18 TOMORROWNOW, INC.

19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA
21 OAKLAND 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)

**DEFENDANTS' PROPOSED
FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

Date: September 30, 2010

Time: 9:00 am

Place: 3rd Floor, Courtroom 3

Judge: Hon. Phyllis J. Hamilton

1 Pursuant to the Court's May 5, 2008 Case Management and Pretrial Order, Defendants
2 SAP AG, SAP America, Inc., and TomorrowNow, Inc. (together "Defendants") submit the
3 following proposed findings of fact and conclusions of law for the "claims to be tried by the
4 Court." D.I. 84 (5/5/08 Order).

5 Plaintiffs Oracle USA, Inc., Oracle International Corporation, Oracle EMEA Limited, and
6 Siebel Systems, Inc. ("Plaintiffs") only seek equitable relief with respect to two claims: (1) a
7 claim under Section 17200 seeking injunctive relief, and (2) a claim for an accounting.

8 **I. FINDINGS OF FACT**

9 **A. Unfair Competition**

10 1. The jury having found Defendants not liable on any of the asserted legal
11 claims, and the Court having found that Defendants did not engage in an unfair business practice,
12 the Court finds that TomorrowNow's customer service activities were competitive, but they were
13 not the sort of "immoral" consumer-focused conduct at which Section 17200 is directed.

14 **B. Accounting**

15 1. The jury having found Defendants not liable on any of the asserted legal
16 claims, and the Court having found Defendants not liable on any equitable claims, the Court finds
17 that no money or other financial benefit was improperly received by Defendants.

18 2. Even if an amount of money were due from Defendants to Plaintiffs, any
19 such amount could be ascertained without resorting to an accounting.

20 **II. CONCLUSIONS OF LAW**

21 **A. Unfair Competition**

22 1. Plaintiffs have alleged unfair competition in violation of section 17200 of
23 the California Business and Professions Code. To prove unfair competition, Plaintiffs must
24 demonstrate that: (1) Defendants engaged in a business act or practice that was unlawful, unfair,
25 or fraudulent, (2) Plaintiffs suffered injury in fact, and (3) Plaintiffs have lost money or property.
26 *See Birdsong v. Apple, Inc.*, 590 F.3d 955, 959 (9th Cir. 2009). An "unfair" business practice
27 occurs when a business practice "offend[s] an established public policy" or when the practice is
28 "immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers." *See*

1 *Chip-Mender, Inc. v. Sherwin-Williams Co.*, No. C 05-3465 PJH, 2006 WL 13058, at *9 (N.D.
 2 Cal. Jan. 3, 2006) (citation omitted). An “unfair” business practice occurs when a business
 3 practice offends an established public policy or when the practice is immoral, unethical,
 4 oppressive, unscrupulous, or substantially injurious to consumers. *See id.*

5 2. The Court finds that Plaintiffs’ claims are moot because the allegedly
 6 unlawful conduct has ceased. Under California law, “[i]njunctive relief is available to prevent
 7 future harm, not to address past harm.” *Haley v. Casa Del Rey Homeowners Ass’n*, 153 Cal. App.
 8 4th 863, 873 (Ct. App. 2007); *see also Palm Med. Group, Inc. v. State Comp. Ins. Fund*, 161 Cal.
 9 App. 4th 206, 228 (Ct. App. 2008) (upholding the denial of an injunction for a UCL claim where
 10 “the need for prospective relief was at that point highly uncertain,” because the supposedly unfair
 11 program had already been shut down and dissolved); *Donald v. Cafe Royale, Inc.*, 218 Cal. App.
 12 3d 168, 184 (Ct. App. 1990) (holding that, because “an injunction should not be granted as
 13 punishment for past acts,” the court did not err by denying an injunction where the allegedly
 14 discriminatory business had ceased operating, thereby rendering any injunction moot).

15 3. The Court find that Plaintiffs’ the claims are barred by the doctrines of
 16 laches and waiver. *See Estate of Peebles*, 27 Cal. App. 3d, 163, 166 (1972).

17 4. The Court finds that Plaintiffs failed to comply with the applicable statute
 18 of limitations and thus are not entitled to pursue a claim for unfair competition. A claim for
 19 unfair competition must be brought within four years of accrual. *See Cal. Bus. & Prof. Code* §
 20 17208 (2010). Plaintiffs knew or should have known of Defendants’ allegedly unfair competitive
 21 behavior prior to March 22, 2003. Thus, Plaintiffs’ claim for unfair competition is barred.

22 5. The Court finds that, in asserting unfair competition, Plaintiffs seek to
 23 recover for the same conduct on which the copyright infringement claim is based. Thus, the
 24 unfair competition claim is preempted by the Copyright Act. *See 17 U.S.C. § 301(a)*.

25 **B. Accounting**

26 1. Plaintiffs seek an accounting. Plaintiffs must demonstrate that: (1) a
 27 balance is due to them and (2) there is no other adequate remedy at law. *See Parrish v. Nat’l*
 28 *Football League Players Ass’n*, 534 F. Supp. 2d 1081, 1100 (N.D. Cal. 2007).

1 2. The Court finds that because Plaintiffs' affirmative claims cannot succeed,
2 their derivative accounting claim must fail as well.

3 3. The Court finds that extensive discovery on damages, and the significant
4 damage award Plaintiffs seek, moot this claim because there is an adequate remedy at law and an
5 accounting is not necessary. *See St. James Church v. Superior Court*, 135 Cal. App. 2d, 352, 359
6 (1955).

7 4. The Court finds that, with their accounting claim, Plaintiffs seek to recover
8 for the same conduct on which the copyright infringement claim is based. Thus, the accounting
9 claim is preempted by the Copyright Act. *See* 17 U.S.C. § 301(a).

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Dated: August 5, 2005

JONES DAY

By: /s/ Tharan Gregory Lanier
Tharan Gregory Lanier

Counsel for Defendants
SAP AG, SAP AMERICA, INC., and
TOMORROWNOW, INC.