

1 Robert A. Mittelstaedt (SBN 060359)
Jason McDonell (SBN 115084)
2 Elaine Wallace (SBN 197882)
JONES DAY
3 555 California Street, 26th Floor
San Francisco, CA 94104
4 Telephone: (415) 626-3939
Facsimile: (415) 875-5700
5 ramittelstaedt@jonesday.com
jmcdonell@jonesday.com
6 ewallace@jonesday.com

7 Tharan Gregory Lanier (SBN 138784)
Jane L. Froyd (SBN 220776)
8 JONES DAY
1755 Embarcadero Road
9 Palo Alto, CA 94303
Telephone: (650) 739-3939
10 Facsimile: (650) 739-3900
tglanier@jonesday.com
11 jfroyd@jonesday.com

12 Scott W. Cowan (Admitted *Pro Hac Vice*)
Joshua L. Fuchs (Admitted *Pro Hac Vice*)
13 JONES DAY
717 Texas, Suite 3300
14 Houston, TX 77002
Telephone: (832) 239-3939
15 Facsimile: (832) 239-3600
swcowan@jonesday.com
16 jlfuchs@jonesday.com

17 Attorneys for Defendants
SAP AG, SAP AMERICA, INC., and
18 TOMORROWNOW, INC.

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

23 ORACLE USA, INC., et al.,

24 Plaintiffs,

25 v.

26 SAP AG, et al.,

27 Defendants.

Case No. 07-CV-1658 PJH (EDL)

**[PROPOSED] ORDER DENYING ORACLE'S
MOTION FOR LEAVE TO FILE MOTION
FOR RECONSIDERATION REGARDING
SAVED DEVELOPMENT COSTS**

1 Having considered the papers filed by the parties in connection with Oracle's Motion for
2 Leave to File Motion for Reconsideration Regarding Saved Development Costs (the "Motion"):

3 IT IS HEREBY ORDERED THAT: Oracle's Motion is DENIED.

4 Oracle has moved for leave to file a motion for reconsideration regarding the Court's
5 ruling at the September 30, 2010 Final Pretrial Conference and its Final Pretrial Order excluding
6 evidence of saved development costs. Oracle argues that this type of evidence is relevant to
7 calculating actual damages in the form of a hypothetical license and that reconsideration is
8 appropriate because the Court failed to consider dispositive legal arguments Oracle offered to
9 support admitting such evidence. Two reasons compel denial of the Motion.

10 First, the Motion is moot. For the reasons stated in the Court's September 1, 2011 Order,
11 ECF No. 1081, Oracle may not pursue hypothetical license damages in this case, and the new trial
12 will be limited to determining lost profits and infringer's profits only. Oracle's Motion seeks to
13 revisit the Court's orders addressing the admissibility of evidence that Oracle would offer solely
14 in support of its precluded hypothetical license claim. There is no need for this Court to
15 reconsider its rulings on evidence that is irrelevant to the new proceedings.

16 Second, Oracle's Motion fails to comply with the Local Rules. Where a court's ruling
17 has not resulted in a final judgment or order, a party may seek reconsideration of the ruling under
18 Civil Local Rule 7-9, but must first obtain leave of the court. Civ. L.R. 7-9(a)-(b) (citing Fed. R.
19 Civ. P. 54(b)). The Rule allows reconsideration under only three circumstances: (1) where, at the
20 time of the motion, "a material difference in fact or law exists from that which was presented to
21 the Court before entry of the interlocutory order for which reconsideration is sought"; (2) the
22 "emergence of new material facts or a change of law occurring after the time of such order"; or
23 (3) "manifest failure by the Court to consider material facts or dispositive legal arguments"
24 presented to the court before the order. Civ. L.R. 7-9(b). Civil Local Rule 7-9 also expressly
25 prohibits the repetition of "any oral or written argument made by the applying party in support of
26 or in opposition to the interlocutory order which the party now seeks to have reconsidered. Any
27 party who violates this restriction shall be subject to appropriate sanctions." Civ. L.R. 7-9(c).
28 Courts may summarily deny motions that are not filed in compliance with the Local Rules.

1 *Grove v. Wells Fargo Fin. Cal., Inc.*, 606 F.3d 577, 582 (9th Cir. 2010) (upholding district court’s
2 denial of motion to tax costs that was not in compliance with court’s local rules); *Elder-Evins v.*
3 *Casey*, No. C 09-05775 SBA, 2011 U.S. Dist. LEXIS 103080, at *5-6 (N.D. Cal. Sept. 13, 2011)
4 (denying motion for leave to file motion for reconsideration for failing to show any of three
5 conditions required for reconsideration under Civil Local Rule 7-9).

6 Here, Oracle does not argue that it is entitled to reconsideration on the grounds of newly
7 discovered facts or an intervening change in controlling law. Instead, Oracle asserts that the
8 Court should reconsider its evidentiary ruling on saved development costs due to a “manifest
9 failure” by the Court to consider dispositive legal arguments. In support of this claim, Oracle
10 offers only recycled arguments, which the Court considered and rejected in making its rulings.
11 There is no basis for Oracle’s contention that the Court failed to consider the parties’ detailed
12 arguments on these issues, on which the Court entertained both written and oral argument.
13 *Salinas v. City of San Jose*, No. 5:09-cv-04410 EJD, 2011 U.S. Dist. LEXIS 94354, at *9 (N.D.
14 Cal. Aug. 23, 2011). Oracle’s repetition of arguments also violates Local Rule 7-9(c)’s express
15 prohibition. Because Oracle fails to make any of the three showings required by Civil Local Rule
16 7-9, the Motion is DENIED.

17 **IT IS SO ORDERED.**

18
19
20
21 DATED: _____

By: _____
Hon. Phyllis J. Hamilton