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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 UP-
 SELL AND CROSS-SELL PROJECTIONS**

1 Having considered the papers filed by the parties in connection with Oracle's Motion for
2 Leave to File Motion for Reconsideration Regarding Up-Sell and Cross-Sell Projections (the
3 "Motion"):

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

5 Oracle has moved for leave to file a motion for reconsideration regarding the Court's
6 November 8, 2010 ruling at the first trial excluding evidence of cross-sell and up-sell projections.
7 Oracle argues that this type of evidence is relevant to calculating actual damages in the form of a
8 hypothetical license and that reconsideration is appropriate because the Court failed to consider
9 dispositive legal arguments Oracle offered to support admitting such evidence. Two reasons
10 compel denial of the Motion.

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

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

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

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

18 **IT IS SO ORDERED.**

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22 DATED: _____ By: _____
23 Hon. Phyllis J. Hamilton