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UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

JOANNE SIEGEL, ET AL.,
 Plaintiffs,
 vs.
 WARNER BROS. ENTERTAINMENT,
 INC., ET AL.,
 Defendants.

CASE NO. CV 04-08400 PA (RZx)
 ORDER DENYING DEFENDANT'S
 MOTION FOR RECONSIDERATION

DOCKETED ON CM
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This matter came before the Court on September 25, 2006 on the motion of Defendant for reconsideration of this Court's order of August 18, 2006. Defendant appeared through its counsel Michael Bergman and Anjani Mandavia. Plaintiffs appeared through their counsel Marc Toberoff. The Court heard argument of counsel and took the matter under submission.

In its order of August 18, 2006, the Court largely denied the motion of Defendant to compel the production of several categories of documents which were protected by the attorney-client privilege. Defendant stated the documents were relevant to determining Plaintiffs' former counsel's authority when he sent a letter during the course of settlement negotiations. Defendant asserted that Plaintiffs had waived the privilege, largely through their response to a Request to Admit.

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1 In the course of framing the issue for decision, the Court noted that Plaintiffs
2 had not, as a matter of pleading, placed the question of counsel's authority in issue. This
3 statement was based on inquiries to and responses from both Plaintiffs' counsel and
4 Defense counsel at oral argument on the motion. Both counsel now state that they were
5 wrong, and that Plaintiffs pleaded an affirmative defense of lack of authority in their
6 Amended Reply to Defendant's counterclaims in each of the cases.

7 Defendant asserts that this error, and the Court's reliance on it, mandates
8 reconsideration of the Court's ruling on the prior motion. The Court does not agree. The
9 Court's statement of what was *not* at issue on the prior motion was merely the prelude to
10 stating what *was* at issue. And what *was* at issue was a question of waiver created by a
11 response to a discovery request. The Joint Stipulation of the parties did not present the
12 Court with the issue of the impact of the pleadings, although it could have, and the Court
13 is reluctant to bootstrap that issue into the prior order when it has not been fully briefed,
14 or considered by the Court. As one example of the permutations involved in the issue, at
15 oral argument on the present motion, the Court questioned Defendant's counsel about
16 Plaintiff's intention to move to amend his Reply to the counterclaim by withdrawing the
17 affirmative defense. Counsel for Defendant conceded that it would be unusual for a Court
18 not to allow a party to withdraw an affirmative defense, but also stated that he was not sure
19 that it was an *affirmative* defense — *i.e.*, the question of the attorney's authority might be
20 subsumed in the mere denial of the existence of a contract of settlement. There has been
21 no exploration of this or any other potential issues in memoranda filed with the Court.

22 The local rule governing reconsideration authorizes a Court to revisit a ruling
23 if there is a material difference in fact or law which could not have been known earlier
24 through the exercise of reasonable diligence. L.R. 7-18. The status of the pleadings could
25 have been known earlier; the parties simply had to look. Had they done so, they might
26 have seen a different issue from the one they presented to the Court; they might have
27 entered earlier, and more fruitful, negotiations to resolve it; and, failing at resolution, they
28 could have researched the matter and provided the Court with the fruits of their research.

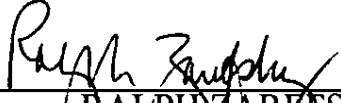
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1 That did not happen, and the Court will not push into the "reconsideration" box something
2 that would not truly be reconsideration, but would instead be an entirely new motion.

3 The motion for reconsideration is denied.

4 IT IS SO ORDERED.

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6 DATED: September 25, 2006

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10 (RALPH ZAREFSKY)
11 UNITED STATES MAGISTRATE JUDGE
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