

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CHAD HERRON, individually,  
and on behalf of himself and  
all others similarly  
situated,

No. 2:12-cv-02103-GEB-CKD

Plaintiffs,

v.

BEST BUY STORES, L.P., a  
Virginia limited partnership,

Defendant.

**ORDER DENYING DEFENDANT'S MOTION  
FOR RECONSIDERATION**

17 Defendant Best Buy Stores L.P. requests reconsideration  
18 of an Order issued by the Magistrate Judge on May 4, 2015 (the  
19 "May 4 Order"), which granted a protective order preventing  
20 Defendant from deposing Plaintiff's counsel Richard Lambert and  
21 Gene Stonebarger.<sup>1</sup> (Def.'s Req. Reconsid. 1:3-11, ECF No. 112.)  
22 Defendant noticed the depositions of Lambert and Stonebarger to  
23 support its statute of limitations defense, and Plaintiff moved  
24 for a protective order arguing the information sought is

25       <sup>1</sup> Plaintiff objects to Defendant's reply brief and "requests that the  
26 Court formally strike or disregard" the reply, arguing that "Local Rule 303  
27 [under which Defendant's motion is brought] does not permit or even  
28 contemplate the filing of a reply brief." (Obj. to Def.'s Submission Reply Br.  
1:3-6, ECF No. 116.) However, Plaintiff has not shown that Local Rule 303  
negates the portion of Local Rule 230(d) that authorizes a reply brief to be  
filed. Therefore, the objection is overruled.

1 protected under the attorney-work product doctrine. The  
2 Magistrate Judge granted Plaintiff's motion in the May 4 Order  
3 holding in part:

4 [A]ny deposition questions [of Lambert and  
5 Stonebarger] will inevitably tread on the  
6 attorneys' mental impressions and  
7 investigation of the factual matters leading  
8 up to the filing of the original and amended  
9 complaints . . . Inquiry into the facts  
10 underlying [P]laintiff's counsel's decision  
11 to name Best Buy Co. Inc. as the defendant  
12 will breach protected work product. The  
attorneys that are the subject of the pending  
motion have submitted in this case affidavits  
on the statute of limitations issue. Further  
inquiry by deposition of [P]laintiff's  
attorneys is not warranted. Accordingly, IT  
IS HEREBY ORDERED that [P]laintiff's motion  
for a protective order (ECF No. 97) is  
granted.

13 (Order, 3:1-3; 3:13-18, ECF No. 110.)

14 Defendant argues the May 4 Order incorrectly found that  
15 the information it seeks would invade attorney work product since  
16 it "seeks to depose counsel about knowledge they acquired before  
17 and irrespective of their representation of Plaintiff in this  
18 action . . . [and their] failure to name Best Buy Stores, L.P.  
19 as a defendant before the expiration of the statute of  
20 limitations." (Req. Recons. 8:17-9:2, ECF No. 112.) Defendant  
21 also argues that even if the proposed depositions would tread on  
22 work product, Plaintiff's counsel waved any privilege by filing  
23 declarations in support of Plaintiff's opposition to Defendant's  
24 motion to dismiss the Second Amended Complaint. However, this  
25 waiver argument is not considered since Defendant has not shown  
26 it presented the argument to the Magistrate Judge and "[m]otions  
27 for reconsideration are . . . not the place for parties to make  
28 new arguments not raised in their original briefs." Hendon v.

1 Baroya, No. 1:05-cv-01247-AWI-GSA-PC, 2012 WL 995757, at \*1 (E.D.  
2 Cal. Mar. 23, 2012) (citing Zimmerman v. City of Oakland, 255  
3 F.3d 734, 740 (9th Cir. 2001); N.W. Acceptance Corp. v. Lynwood  
4 Equip., Inc., 841 F.2d 918, 925-26 (9th Cir. 1988)).

Local Rule 303(f) states “[t]he standard that the assigned Judge shall use in [reconsideration of a Magistrate Judge’s ruling] is the ‘clearly erroneous or contrary to law’ standard set forth in 28 U.S.C. § 636(b)(1)(A).” “A [M]agistrate [J]udge’s factual findings are ‘clearly erroneous’ when the district court is left with the definite and firm conviction that a mistake has been committed.” Mackey v. Frazier Park Pub. Util. Dist., No. 1:12-CV-00116-LJO-JLT, 2012 WL 5304758, at \*2 (E.D. Cal. Oct. 25, 2012) (quoting Sec. Farms v. Int’l Bhd. of Teamsters, 124 F.3d 999, 1014 (9th Cir. 1997)). “An order ‘is contrary to law when it fails to apply or misapplies relevant statutes, case law, or rules of procedure.’” Id. (quoting Knutson v. Blue Cross & Blue Shield of Minn., 254 F.R.D. 553, 556 (D. Minn. 2008)).

19                   Defendant has not shown the May 4 Order was clearly  
20 erroneous or contrary to law given the testimony Defendant seeks  
21 to elicit. Therefore, Defendant's reconsideration request is  
22 DENIED.

23 Dated: July 2, 2015

GARLAND E. BURRELL, JR.  
Senior United States District Judge