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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA
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9 CHAD HERRON, individually,
10 and on behalf of himself and
11 all others similarly
situated,

12 Plaintiffs,

13 v.

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

15 Defendant.
16

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

**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.¹ (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 ¹ 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
13 attorneys that are the subject of the pending
14 motion have submitted in this case affidavits
15 on the statute of limitations issue. Further
16 inquiry by deposition of [P]laintiff's
17 attorneys is not warranted. Accordingly, IT
18 IS HEREBY ORDERED that [P]laintiff's motion
19 for a protective order (ECF No. 97) is
20 granted.

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

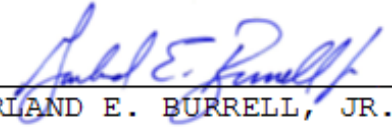
22 Defendant argues the May 4 Order incorrectly found that
23 the information it seeks would invade attorney work product since
24 it "seeks to depose counsel about knowledge they acquired before
25 and irrespective of their representation of Plaintiff in this
26 action [and their] failure to name Best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

5 Local Rule 303(f) states "[t]he standard that the
6 assigned Judge shall use in [reconsideration of a Magistrate
7 Judge's ruling] is the 'clearly erroneous or contrary to law'
8 standard set forth in 28 U.S.C. § 636(b)(1)(A)." "A [M]agistrate
9 [J]udge's factual findings are 'clearly erroneous' when the
10 district court is left with the definite and firm conviction that
11 a mistake has been committed." Mackey v. Frazier Park Pub. Util.
12 Dist., No. 1:12-CV-00116-LJO-JLT, 2012 WL 5304758, at *2 (E.D.
13 Cal. Oct. 25, 2012) (quoting Sec. Farms v. Int'l Bhd. of
14 Teamsters, 124 F.3d 999, 1014 (9th Cir. 1997). "An order 'is
15 contrary to law when it fails to apply or misapplies relevant
16 statutes, case law, or rules of procedure.'" Id. (quoting Knutson
17 v. Blue Cross & Blue Shield of Minn., 254 F.R.D. 553, 556 (D.
18 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

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