

Plaintiff Bedrock Computer Technologies LLC (“Bedrock”) hereby submits its response in opposition to Defendants’ Objections to and Motion for Reconsideration of Judge Love’s Order Granting Bedrock’s Motion for Leave to Supplement Expert Report of Roy Weinstein (Dkt. No. 735). Bedrock respectfully requests that the Court adopt Magistrate Judge Love’s Order (Dkt. No. 691) (“Order”) permitting Bedrock to supplement Mr. Weinstein’s expert report, overrule Defendants’ objections, and deny Defendants’ motion for reconsideration.

I. INTRODUCTION

After excluding the portions of Mr. Weinstein’s opening expert report which relied upon settlement licenses (Dkt. No. 656) and considering the parties’ briefings, Magistrate Judge Love correctly found that Bedrock’s Motion for Leave to Supplement Expert Report of Roy Weinstein should be granted. *See* Dkt. No. 691. Defendants’ motion, which seeks to overturn Judge Love’s Order, raises arguments which were previously carefully considered and then rejected by Judge Love. For these reasons, the Court should deny Defendants’ motion and adopt Judge Love’s Order.

II. ARGUMENT

A. Defendants Have Not Demonstrated that Judge Love’s Findings Are Clearly Erroneous or Contrary to Law.

Federal Rule of Civil Procedure 72(a) and Appendix B, Local Rule 4(a) make clear that a district court may modify or set aside a magistrate’s order on a non-dispositive issue only where the order is “clearly erroneous or . . . contrary to law.” *See also* 28 U.S.C. § 636(b)(1)(A) (“A judge of the court may reconsider any pretrial matter under [section (A)] where it has been shown that the magistrate’s order is clearly erroneous or contrary to law.”). Because the standard of review for a motion for reconsideration is so highly deferential, a party seeking reconsideration must show more than that the prior decision is “just maybe or probably wrong;

[the prior decision] must . . . strike [the court] as wrong with the force of a five-week-old, unrefrigerated dead fish.” *TFWS v. Franchot*, 572 F.3d 186, 194 (4th Cir. 2009).

As is demonstrated below, Defendants have merely rehashed arguments which were properly rejected by Judge Love. In doing so, they have effectively ignored their burden of demonstrating “clear error.” In any event, Judge Love issued a well-reasoned opinion which granted Defendants leave to depose Mr. Weinstein, provide their own supplemental report on damages, and object to Mr. Weinstein’s supplemental report at trial. ORDER at 2. Even if the Defendants had actually attempted to show clear error in their motion, they would have failed because no clear error exists. The Court should therefore deny Defendants’ motion for reconsideration.

B. Mr. Weinstein’s Supplemental Report Does Not Set Forth “an Entirely New Methodology.”

Defendants’ argument that Mr. Weinstein’s supplemental report is not a “proper” supplement is unavailing. Indeed, the performance tests and resulting cost savings underlying Mr. Weinstein’s supplemental report were extensively discussed in his opening report. *See* Dkt. No. 560, Ex. A, at ¶¶ 72, 176, 240, and 248. As such, Defendants cannot reasonably contend that Mr. Weinstein’s supplement, which merely expounds upon a theory contained within his opening report, sets forth an “entirely new methodology.” Rather, Bedrock properly “supplement[ed] its report to conform to the Court’s ruling as to the extrapolation of a per server royalty from the litigation licenses,” as permitted by Judge Love. *See* Dkt. No. 691 at 1.

In addition, Judge Love’s Order attempted to minimize any prejudice to Defendants as a result of Mr. Weinstein’s supplemental report by giving Defendants leave to depose Mr. Weinstein on the subject matter contained in his supplemental report. ORDER at 2. Defendants did, in fact, depose Mr. Weinstein for an additional four hours and forty-two minutes. Weinstein

Dep. (Apr. 5, 2011) (attached as Ex. A) at 193:25-194:3. Further, as permitted by Judge Love, Defendants submitted a Supplemental Rebuttal Expert Report of Keith R. Ugone Ph. D. in response to Mr. Weinstein's supplemental report.¹ As such, Defendants cannot demonstrate that Judge Love's ruling is clearly erroneous or contrary to law.

III. CONCLUSION.

For the aforementioned reasons, Bedrock respectfully requests that the Court deny Defendants' Motion for Reconsideration.

¹ These precautions also serve to rebut Defendants' arguments regarding the untimeliness of Mr. Weinstein's supplemental report.

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Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of the forgoing document via the Court's CM/ECF system pursuant to the Court's Local Rules this 25th day of April, 2011.

/s/ Ryan A. Hargrave
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