UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MOJO NICHOLS, et al., Plaintiffs,	
-against-	20 Civ. 3677 (LGS)
NOOM INC., et al., Defendants.	ORDER

LORNA G. SCHOFIELD, District Judge:

WHEREAS, this case concerns a dispute over the automatic renewal procedure for a weight loss app. The matter has been referred to Judge Parker for general pretrial supervision. Plaintiffs object to her March 11, 2021, discovery order concerning the production of hyperlinked documents (the "Order").

WHEREAS, the Order denied Plaintiffs' letter motion seeking clarification or, in the alternative, reconsideration of the Court's prior rulings that Defendants (1) need not produce all hyperlinked documents as part of a document "family" with the document containing the hyperlink, (2) could separately produce the subset of relevant, internal hyperlinked documents on Google Drive and (3) would produce or identify, at Plaintiffs' request, internal hyperlinked documents that were referenced in key documents but that Plaintiffs could not locate in the separate production. This ruling was based on a proportionality analysis consistent with Rules 1 and 26(b)(1), and on Rule 34, which requires a party to produce documents in a "reasonably usable form," Fed. R. Civ. P. 1, 26(b)(1), 34 advisory committee's note to 2006 amendment, as well as Sedona Principles 8 and 12. *See* The Sedona Principles, *Third Edition: Best Practices, Recommendations & Principles for Addressing Electronic Document Production*, 19 Sedona Conf. J. 1 (2018). The Order found that (1) a hyperlinked document is not the same as an

attachment, (2) the parties' protocol for the production of electronically stored information does not address the production of hyperlinked documents, (3) Plaintiffs had not made a showing that all or even a majority of the hyperlinked documents are material to the litigation and (4) production of a new collection of documents that have already been or are being collected would be redundant and unnecessarily increase costs and cause delays.

WHEREAS, for objections to a magistrate judge's ruling on nondispositive matters, district courts must "modify or set aside any part of the order that is clearly erroneous or is contrary to law." Fed. R. Civ. P. 72(a). The Order concerning production of hyperlinked internal documents is nondispositive. *See Thomas E. Hoar, Inc. v. Sara Lee Corp.*, 900 F.2d 522, 525 (2d Cir. 1990) ("Matters concerning discovery generally are considered 'nondispositive' of the litigation."); *accord David v. Weinstein Co. LLC*, No. 18 Civ. 5414, 2020 WL 4042773, at *3 (S.D.N.Y. July 17, 2020).

WHEREAS, "A finding is 'clearly erroneous' when, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Wu Lin v. Lynch*, 813 F.3d 122, 126 (2d Cir. 2016) (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948)). A ruling is contrary to law if it "fails to apply or misapplies relevant statutes, case law or rules of procedure." *Winfield v. City of N.Y.*, No. 15 Civ. 5236, 2017 WL 5054727, at *2 (S.D.N.Y. Nov. 2, 2017) (internal citation omitted). "It is well-settled that a magistrate judge's resolution of a nondispositive matter should be afforded substantial deference and may be overturned only if found to have been an abuse of discretion." *Xie v. JPMorgan Chase Short-Term Disability Plan*, No. 15 Civ. 4546, 2018 WL 501605, at *1 (S.D.N.Y. Jan. 19, 2018) (internal citation omitted).

WHEREAS, the Order is not contrary to law. The Order properly relies on Rule 26(b)

which governs the scope and limits of civil discovery. Rule 26(b)(1) permits discovery of material that is "relevant . . . to a claim or defense and proportional to the needs of the case, [considering factors including] whether the burden or expense of the proposed discovery outweighs its likely benefit." Rule 26(b)(2)(C)(i) further requires the court to limit discovery that "is unreasonably cumulative or duplicative."

WHEREAS, the Order is not clearly erroneous in assessing and addressing the needs of the case. The Order found that Plaintiffs had not shown that all or even a majority of the hyperlinked documents are material to the litigation. Those that are relevant will be produced in a separate collection, and if Plaintiffs cannot identify a particular hyperlinked document from the separate collection, Plaintiffs may request, and Defendant must separately produce or identify, the hyperlinked document. Presumably, some of the hyperlinked documents will be of no import, or will link to external sources like the internet, or will have independent significance not necessarily related to the document in which they were hyperlinked.

WHEREAS, the Order is not clearly erroneous in balancing the burden or expense against the benefit of producing hyperlinked documents as part of a family. The Order found that Defendant had shown that pulling hyperlinked documents could result in pulling the same document "tens if not hundreds of times in some cases," which would complicate deduplication, delay production and result in additional costs of more than $180,000. The Order is not clearly erroneous in concluding that it strikes an appropriate balance, particularly where many of the hyperlinked documents may be of no real value in the case and are redundant of the documents already collected.

WHEREAS, Plaintiffs make several arguments in support of their objections to the Order. None is persuasive. First, Plaintiffs argue that courts have found that document families

must be preserved. The cases Plaintiffs cite do not support their position because they dealt with attachments, *see Pom Wonderful LLC v. Coca-Cola Co.*, No. 08 Civ. 6237, 2009 WL 10655335 (C.D. Cal. Nov. 30, 2009), were in line with Judge Parker's ruling, *see Shenwick v. Twitter, Inc.*, No. 16 Civ. 5314, 2018 WL 5735176 (N.D. Cal. Sept. 17, 2018), or are consistent with the parties' discovery practices in this case, *see Milgard Mfg., Inc. v. Liberty Mut. Ins. Co.*, No 13 Civ. 6024, 2015 WL 1884069 (W.D. Wash. Apr. 24, 2015). Second, Plaintiffs argue that Defendants' allegedly improper collection process can be inexpensively fixed. Judge Parker disagreed and reasonably found that Plaintiffs' cost and delay estimates were not supported by the evidence. To the extent Plaintiffs' arguments rely on new authorities or facts not presented to Judge Parker, those arguments are not properly before the Court. *See Maria v. Rogue Tomate Chelsea LLC*, No. 18 Civ. 9826, 2021 WL 734958, at *1 (S.D.N.Y. Feb. 25, 2021). Finally, Plaintiff's speculative argument that the likelihood for error is higher because Judge Parker ruled without hearing oral argument is without basis.

WHEREAS, two amicus briefs were filed, along with an untimely supplemental declaration in support of Plaintiffs' objections. These documents largely duplicate the arguments already made by Plaintiffs and, in any event, are unpersuasive. It is hereby

ORDERED that, for the foregoing reasons, Plaintiffs' objections are OVERRULED. Plaintiffs' request for oral argument is DENIED as moot.

The Clerk of Court is respectfully directed to close the motions at Dkt. Nos. 271, 297, 303.

Dated: April 30, 2021
New York, New York

LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE