

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

RICHARD A. WILLIAMSON,
Plaintiff,
v.
GOOGLE LLC,
Defendant.

Case No. 15-cv-00966-BLF

**ORDER DENYING PLAINTIFF’S
MOTION FOR RELIEF FROM
NONDISPOSITIVE PRETRIAL ORDER
OF MAGISTRATE JUDGE
REGARDING JOINT BRIEF AT
ECF 189**

[Re: ECF 222]

Plaintiff Williamson filed a motion for relief from the nondispositive pretrial order of Magistrate Judge Nathanael M. Cousins (“Order,” ECF 209) regarding joint brief at ECF 189. Mot., ECF 222. Judge Cousins denied Williamson’s request to compel Defendant Google LLC (“Google”) to designate one or more witnesses to testify on Topic Nos. 29 and 30 of Williamson’s Notice of Fed. R. Civ. P. 30(b)(6) Deposition of Google. Mot. 1. Williamson asks the Court to reverse Judge Cousins’ Order. For the reasons stated below, the instant motion is DENIED.

I. LEGAL STANDARD

A district court may refer nondispositive pretrial matters to a magistrate judge under 28 U.S.C. § 636(b)(1)(A). The district court “may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate judge’s order is clearly erroneous or contrary to law.” 28 U.S.C. § 636(b)(1)(A); *see also* Fed. R. Civ. P. 72(a). On review of a nondispositive order, “the magistrate’s factual determinations are reviewed for clear error, and the magistrate’s legal conclusions are reviewed to determine whether they are contrary to law.” *Perry v. Schwarzenegger*, 268 F.R.D. 344, 348 (N.D. Cal. 2010). This standard is highly deferential – the district judge may not simply substitute his or her judgment for that of the magistrate judge.

1 *Grimes v. City and Cnty. of San Francisco*, 951 F.2d 236, 241 (9th Cir. 1991).

2 **II. DISCUSSION**

3 The instant motion pertains to the parties’ discovery dispute in their joint letter brief at
4 ECF 189. In that joint letter brief, Williamson requested Judge Cousins to issue an order
5 compelling Google to designate one or more witnesses to testify on Topic Nos. 29 and 30 of his
6 Rule 30(b)(6) Notice. Joint Letter Br. 1, ECF 189. Topic No. 29 requests a designee as to “[a]ny
7 communications between any MatchLogic employee and [Google] concerning the Accused
8 Technology or Truecount.” *Id.* at 5. Topic No. 30 seeks a designee on the “facts and evidence
9 underlying any theories, arguments or contentions regarding [Google’s] defenses or waiver or
10 estoppel including without limitation any reliance by [Google] on any communication.” *Id.* Judge
11 Cousins denied Williamson’s request. Order; Hearing Tr. 43:11–23, ECF 213.

12 Williamson argues that Judge Cousins applied an “incorrect ‘good cause and diligence’
13 standard used for motions to amend the schedule rather than the applicable relevancy and
14 proportionality standard prescribed by Rule 26 for timely discovery.” Mot. 1. According to
15 Williamson, he timely served his Rule 30(b)(6) Notice more than two months before the end of
16 fact discovery and that Topic Nos. 29 and 30 seek relevant information that is proportional to the
17 needs of this case. *Id.* at 3–5. Williamson further contends that Judge Cousins “made no
18 determination as to the relevancy and proportionality of [the] discovery scope.” *Id.* at 5.

19 The Court is unpersuaded by Williamson’s argument. Even assuming that Williamson is
20 correct that Judge Cousins should have considered the relevancy and proportionality of the
21 discovery request at ECF 189, Williamson’s argument fails because Judge Cousins did consider
22 the proportionality and the needs of the case. Specifically, during the hearing, Judge Cousins
23 denied Williamson’s request on the record “as being not proportional to the needs of the case, and
24 cumulative to other discovery in light of the prior discovery, and in light of the fact that . . . the
25 depositions of Sze, Daoudi, and Shields [will be allowed].” Hearing Tr. 43:11–23.

26 In fact, in the parties’ joint letter brief, Google represented that it has already responded to
27 prior discovery requests and provided information that addresses Topic Nos. 29 and 30 and that
28 further depositions would be duplicative and disproportional to the needs of the case. *See Joint*

1 Letter Br. 5. For example, as for Topic No. 29, Google has provided a substantive response to
2 Williamson’s Interrogatory No. 16 which asked Google to “[d]escribe in detail the facts and
3 circumstances concerning Google’s reliance on any representation by MatchLogic as a defense in
4 this action and identify with particularity any evidence, including testimony, Documents or
5 Persons, relating to such defense.” *Id.* (citing Ex. 11 to Kamber Decl., ECF 189-14; Ex. 13 to
6 Kamber Decl., ECF189-16). Moreover, Williamson has taken the deposition testimony of various
7 third parties, including Michael Griffiths, Kate Everett-Thorp, and Dwight Merriman that Google
8 could rely on in support of its license defense. *Id.* (citing Kamber Decl. ¶ 16, ECF 189-1).
9 Regarding Topic No. 30, Google has substantively responded to Interrogatory No. 8, which
10 broadly asked Google for the “factual and legal bases of its defenses.” *Id.* (citing Ex. 13 to
11 Kamber Decl.). There is no indication that Williamson asserts that Google’s response to
12 Interrogatory No. 8 is deficient. *See id.* On this basis, Judge Cousins reasonably concluded that
13 Williamson’s request to compel Google to designate one or more witnesses to testify on Topic
14 Nos. 29 and 30 was “not proportional to the needs of the case, and cumulative to other discovery
15 in light of the prior discovery.” Hearing Tr. 43:11–17. As such, Judge Cousins’ ruling was not
16 clearly erroneous or contrary to law. *Perry*, 268 F.R.D. at 348.

17 Williamson further asserts that Judge Cousins erred by finding that “further deposition on
18 topics 29 and 30” is cumulative “in light of the fact that [he was] ordering the depositions of Sze,
19 Daoudi, and Shields.” Mot. 5. According to Williamson, the depositions of those three
20 individuals cannot provide cumulative information regarding any communications with
21 MatchLogic because they were not employed by Google or NetGravity¹ during the relevant time at
22 issue. *Id.* at 5. The Court, however, need not determine whether the depositions of Sze, Daoudi,
23 and Shields would result in no duplicative information at all. As discussed above, Google has
24 provided substantive information in response to Williamson’s other discovery requests, and Judge
25 Cousins reasonably found that Williamson’s request as to Topic Nos. 29 and 30 was “cumulative

26
27 _____
28 ¹ Williamson seeks information on any communication between MatchLogic and NetGravity
regarding a license agreement. Joint Letter Br. 2. NetGravity was acquired by DoubleClick,
which was then acquired by Google. *Id.* at 5.

1 to other discovery in light of the prior discovery” and “not proportional to the needs of the case.”
2 Hearing Tr. 43:11–17. Hence, the Court is unable to reach a definite and firm conviction that a
3 mistake has been made. *Perry*, 268 F.R.D. at 348; *Grimes*, 951 F.2d at 241 (holding that the
4 district judge may not simply substitute his or her judgment for that of the magistrate judge).

5 For the foregoing reasons, the Court concludes that Judge Cousins’ order denying
6 Williamson’s request in the parties’ joint brief at ECF 189 was not clearly erroneous or contrary to
7 law. Therefore, Williamson’s motion for relief from the nondispositive pretrial order of Judge
8 Cousins regarding joint brief at ECF 189 is DENIED.

9

10 **IT IS SO ORDERED.**

11

12 Dated: April 10, 2018

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28


BETH LABSON FREEMAN
United States District Judge