

IN THE UNITED STATES DISTRICT COURT
 FOR THE WESTERN DISTRICT OF TEXAS
 AUSTIN DIVISION

NICHOLAS A. USLER, et al.,

Plaintiffs,

v.

VITAL FARMS, INC.,

Defendant.

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1:21-CV-447-RP

ORDER

Before the Court is the order and report and recommendation of United States Magistrate Judge Mark Lane concerning Defendant Vital Farms, Inc.’s (“Vital Farms”) (“Defendant”) Motion for Summary Judgment, (Dkt. 115), Plaintiffs Burcu Karaca, Kenny Kierman, Charles Sankowich, Nicholas A. Usler, and Alina Yurkovsky’s (“Plaintiffs”) Motion for Class Certification, (Dkt. 125, 147), and Defendant’s Motion to Exclude and Strike the Report of Dr. Greg Allenby, (Dkt. 151). (R. & R., Dkt. 180). Plaintiffs timely filed objections to the report and recommendation and appealed the grant of the Motion to Exclude and Strike the Report of Dr. Greg Allenby. (Objs., Dkt. 181).

A party may serve and file specific, written objections to a magistrate judge’s findings and recommendations within fourteen days after being served with a copy of the report and recommendation and, in doing so, secure *de novo* review by the district court. 28 U.S.C. § 636(b)(1)(C). Because Plaintiffs timely objected to the report and recommendation on Defendant’s Motion for Summary Judgment and Plaintiffs’ Motion for Class Certification, the Court reviews the report and recommendation *de novo*. Having done so and for the reasons given in the report and recommendation, the Court overrules the Plaintiffs’ objections and adopts the report and recommendation as its own order.

As for the Plaintiffs' appeal of the magistrate judge's order granting Defendant's Motion to Exclude and Strike the Report of Dr. Greg Allenby, a district judge may reconsider any pretrial matter determined by a magistrate judge 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). District courts apply a "clearly erroneous" standard when reviewing a magistrate judge's ruling under the referral authority of that statute. *Castillo v. Frank*, 70 F.3d 382, 385 (5th Cir. 1995). The clearly erroneous or contrary to law standard of review is "highly deferential" and requires the court to affirm the decision of the magistrate judge unless, based on the entire evidence, the court reaches "a definite and firm conviction that a mistake has been committed." *Gomez v. Ford Motor Co.*, No. 5:15-CV-866-DAE, 2017 WL 5201797, at *2 (W.D. Tex. Apr. 27, 2017) (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)). The clearly erroneous standard "does not entitle the court to reverse or reconsider the order simply because it would or could decide the matter differently." *Id.* (citing *Guzman v. Hacienda Records & Recording Studio, Inc.*, 808 F.3d 1031, 1036 (5th Cir. 2015)). Upon its own review, this Court finds that the magistrate judge's order was not clearly erroneous or contrary to law.

Accordingly, the Court **ORDERS** that the report and recommendation of United States Magistrate Judge Mark Lane, (Dkt. 180), is **ADOPTED**.

IT IS FURTHER ORDERED that Defendant's Motion for Summary Judgment, (Dkt. 115), is **GRANTED IN PART AND DENIED IN PART**. Specifically, Plaintiffs Tanze and Godze's claims are **DISMISSED WITH PREJUDICE** and the New York, Florida, and Michigan express warranty claims are **DISMISSED WITH PREJUDICE**. The motion is otherwise **DENIED WITHOUT PREJUDICE**.

IT IS FURTHER ORDERED that Plaintiffs' Motion for Class Certification, (Dkts. 125, 147), is **DENIED**.

Finally, the Court **AFFIRMS** the order granting Defendant's Motion to Exclude and Strike the Report of Dr. Greg Allenby, (Dkt. 151), and **DENIES** Plaintiffs' appeal, (Dkt. 180).

SIGNED on September 23, 2024.

A handwritten signature in blue ink, appearing to read "R. Pitman", with a horizontal line extending to the right.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE