

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ANTHONY DALE, BRETT JACKSON,
JOHNNA FOX, BENJAMIN BORROW-
MAN, ANN LAMBERT, ROBERT ANDER-
SON, and CHAD HOHENBERY on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

DEUTSCHE TELEKOM AG et al.,

Defendants.

Case No. 22-cv-3189

Judge Thomas M. Durkin

Magistrate Judge Jeffrey Cole

**DEFENDANT T-MOBILE US, INC.'S OPPOSITION TO PLAINTIFFS' MOTION TO
COMPEL ADDITION OF THREE CUSTODIANS**

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I. INTRODUCTION

T-Mobile respectfully submits its Opposition to Plaintiffs’ Motion to Compel T-Mobile to Use Plaintiffs’ Proposed Custodian List. Plaintiffs’ motion should be denied because they have not carried their very heavy burden to overcome the presumption that T-Mobile, as the responding party, is in the best position to choose its custodians. Specifically, Plaintiffs failed to show with facts and evidence that (1) the three in-house attorneys they proposed as additional custodians are likely to have unique, non-privileged, responsive documents that are not available from all of the 50 custodians’ files and non-custodial sources that T-Mobile has agreed to search and (2) the significant burden and expense of adding these custodians whose primary duties were to provide legal advice is proportional to the potential benefits to this case. Plaintiffs’ bald assertions that the additional custodians may have non-privileged, relevant documents beyond what would be captured by the custodians previously agreed upon by the parties are mere speculation.

II. BACKGROUND

A. Plaintiffs’ Claims

Since the April 2018 announcement of their merger, T-Mobile and Sprint were exhaustively investigated by the FCC and the DOJ. The merger was also unsuccessfully challenged in an antitrust lawsuit brought by a group of State Attorneys General in the Southern District of New York (“State AG Action”). The government agencies and the court reviewing the merger all concluded that the transaction, as modified by certain conditions, would promote, rather than lessen, competition in the retail wireless mobile industry. Since the consummation of the merger in April 2020, T-Mobile continues to fully cooperate with the court-appointed monitoring trustee overseeing T-Mobile’s compliance with the DOJ’s Final Judgment intended to “strengthen competition”

and “benefit American consumers nationwide.”¹

More than two years after the merger consummation, Plaintiffs initiated the instant action, seeking to blame the higher prices charged by third parties AT&T and Verizon on T-Mobile’s merger with Sprint. Dkt 1 ¶ 8. On August 23, 2022, T-Mobile moved to transfer this action to the Southern District of New York, arguing, among other things, that it would “manifestly be more efficient and serve the interest of justice for the New York court that already heard relevant evidence and considered the issues to resolve this duplicative case.” Dkt. 43 at 3, 13–14. Plaintiffs opposed the transfer, claiming that their case is not about what transpired “pre-acquisition,” but rather, about the actual effects of the merger “post-acquisition.” Dkt. 59 at 14. The Court denied T-Mobile’s transfer motion, stating “Plaintiffs correctly note that this case differs from the earlier controversy in material respects.” Dkt. 63 at 14. During the parties’ recent meet and confer, Plaintiffs reaffirmed that their claims are not about what happened prior to the merger’s approval, but about the prices of retail mobile wireless services after the merger’s closing. Declaration of Scott Hvidt (“Hvidt Decl.”) ¶¶ 9, 12.

B. The Parties’ Meet and Confer Concerning Plaintiffs’ Discovery Requests

On November 13, 2023, Plaintiffs propounded their first set of document requests on T-Mobile, which included 44 separate requests, many with multiple subparts. Hvidt Decl. ¶ 2 & Ex. A. On January 10, 2024, T-Mobile served its responses and objections to Plaintiffs’ discovery requests. *Id.* ¶ 2. Since then, the parties have met and conferred extensively. *Id.* ¶¶ 2, 5–13. With respect to requests calling for discrete, non-privileged, and readily identifiable sets of documents, T-Mobile agreed to “go get” responsive documents on a non-custodial basis. *Id.* ¶ 3. Such

¹ Press Release, Department of Justice, Office of Public Affairs, *Justice Department Congratulates T-Mobile And Dish For Closing The Boost Divestiture* (July 1, 2020), <https://www.justice.gov/opa/pr/justice-department-congratulates-t-mobile-and-dish-closing-boost-divestiture> (last visited September 11, 2024).

documents include trial transcripts, trial exhibits, and other discovery materials from the State AG Action; documents and information submitted to, and communications with, the FCC, the DOJ, the CPUC, and other regulatory agencies relating to the merger; communications with the FCC relating to the FCC's monitoring of T-Mobile's compliance with the Transfer of Control Order; T-Mobile's retail wireless plans; various categories of structured data; communications with the monitoring trustee overseeing T-Mobile's compliance with the conditions imposed on the merger; T-Mobile's corporate policies concerning document retention, mobile device usage, and antitrust issues; and documents concerning Plaintiffs, among other things. *Id.* T-Mobile has already produced over 760,000 documents, totaling over 3.79 million pages and multiple terabytes of data, from non-custodial sources, including over 2,000 documents collected from T-Mobile's in-house lawyers. *Id.*

As for requests calling for documents not amenable to "go get" collection, such as internal communications concerning the 5G network or the pricing of T-Mobile's phone plans, T-Mobile agreed to search for, review, and produce responsive, non-privileged documents from select custodians. Hvidt Decl. ¶ 4. After conducting the necessary diligence and investigation, on March 18, 2024, T-Mobile proposed 29 custodians, including many of its most senior leaders involved in making T-Mobile's business decisions, such as Michael Sievert, T-Mobile's President and CEO; Peter Osvaldik, EVP and CFO; Jon Freier, President of Consumer Group; John Legere, former President and CEO; and Mike Katz, President of Marketing, Strategy, and Products. *Id.*

Almost two months after receiving T-Mobile's proposed custodian list, on May 2, 2024, Plaintiffs proposed 31 additional custodians, including three current and former in-house lawyers David Miller, Mark Nelson, and Kathleen Ham. Hvidt Decl. ¶ 5. After thoroughly investigating whether those individuals were likely to have responsive documents, T-Mobile met and conferred

with Plaintiffs on June 10, 2024. *Id.* ¶ 6. Because many of Plaintiffs’ proposed custodians had no relevance to this matter or were cumulative and duplicative of other custodians, T-Mobile asked Plaintiffs to explain their reason for requesting the additional custodians. *Id.* Plaintiffs responded with generalized assertions of relevance, indicating that they lacked specific bases for proposing the additional custodians. *Id.* While T-Mobile maintained that the initial list of custodians it proposed was more than sufficient, it agreed to add 11 of Plaintiffs’ proposed custodians. *Id.* ¶ 7. In its objections to the remaining 20, T-Mobile noted that the in-house attorneys’ ESI are predominantly privileged communications, and that their inclusion as custodians would be burdensome and disproportionate to the needs of this case. *Id.*

On July 1, 2024, Plaintiffs agreed to withdraw eight of their proposed custodians. Hvidt Decl. ¶ 8. They continued to insist that T-Mobile include the remaining 12 custodians, including Mr. Miller, Mr. Nelson, and Ms. Ham, and proposed a new custodian as well. *Id.* Following another meet and confer discussion, on July 22, 2024, T-Mobile agreed to add everyone Plaintiffs requested to add as custodians except for the three lawyers (Miller, Nelson, and Ham), on the basis that their documents were predominantly privileged and cumulative of other sources T-Mobile has agreed to previously. *Id.* ¶¶ 9–10.

On July 24, 2024, Plaintiffs responded by offering to withdraw three of their previously proposed custodians—Peter DeLuca (Chief Creative Officer); Dara Sadri (SVP, Prepaid Base); and Mike Enberg (former Director, Consumer Marketing Strategy)—in exchange for including the three in-house attorneys. Hvidt Decl. ¶ 11. On August 6, 2024, the parties again met and conferred. *Id.* ¶ 12. Plaintiffs threatened to upend all of the progress on custodian negotiations unless T-Mobile added the three in-house attorneys as custodians. *Id.* When T-Mobile declined, Plaintiffs stated that they would provide their final position in a follow-up correspondence. *Id.*

On August 22, 2024, Plaintiffs notified T-Mobile that they would move the Court for an order compelling T-Mobile to make its three in-house lawyers as custodians. *Id.* ¶ 13.

III. LEGAL STANDARD

“[T]he party who will be responding to discovery requests is entitled to select the custodians it deems most likely to possess responsive information and to search the files of those individuals.” *HNA Swed. Hosp. Mgmt. AB v. Equities First Holdings, LLC*, 2021 WL 11961093, at *18 (S.D. Ind. Nov. 1, 2021) (cleaned up). “This is because the party responding to discovery requests is typically in the best position to know and identify those individuals within its organization likely to have information relevant to the case.” *Id.* “[A] party claiming that an adversary’s custodial designations are inadequate or incomplete faces a very heavy burden to overcome a presumption that the responding party is in the best position to choose its custodians.” *Lifescan, Inc. v. Smith*, 2022 WL 20853087, at *11 (D.N.J. July 29, 2022). Unless the responding party’s choice is “manifestly unreasonable or the requesting party demonstrates that the resulting production is deficient, the court should not dictate the designation of ESI custodians.” *HNA*, 2021 WL 11961093, at *18 (cleaned up). To justify such an order, the moving party has the initial threshold burden of establishing that the disputed custodians possess uniquely relevant information unavailable from the sources already designated. *Id.* Even when the moving party makes this showing, courts defer to the responding party’s choice of custodians where “the burden of requiring Defendants to expand their search to additional custodians appears to outweigh its likely benefit.” *Enslin v. Coca-Cola Co.*, 2016 WL 7042206, at *4 (E.D. Pa. June 8, 2016); *accord HNA*, 2021 WL 11961093, at *9. “The discovery rules are not an excursion ticket to an unlimited, never-ending exploration of every conceivable matter that captures an attorney’s interest. Parties are entitled to a reasonable opportunity to investigate the facts—and no more.” *In re Broiler Chicken*

Antitrust Litig., 2022 WL 621807, at *2 (N.D. Ill. Mar. 3, 2022) (cleaned up).

IV. ARGUMENT

A. The Disputed Custodians Are Unlikely to Have Non-Privileged Documents Relevant to Plaintiffs' Claims

Plaintiffs fail to meet their threshold burden of showing that these in-house attorneys—Mark Nelson, T-Mobile's current General Counsel; David Miller, who served as T-Mobile's General Counsel until October 2021; and Kathleen Ham, a former Senior Vice President of Government Affairs who retired in December 2023—are likely to have unique, non-privileged documents relevant to this litigation. As Plaintiffs have repeatedly represented to the Court and T-Mobile, this case is about the prices of retail mobile wireless services *after* the merger closed, but Plaintiffs do not point to any evidence suggesting that these lawyers were involved in T-Mobile's pricing decisions before or after the merger.

Mr. Miller served as T-Mobile's Executive Vice President and General Counsel for over twenty years until October 2021. Declaration of Justin Van Alstyne ("Van Alstyne Decl.") ¶ 11. In his capacity as T-Mobile's chief lawyer, Mr. Miller provided legal advice to T-Mobile's business executives, supervised other in-house attorneys in their provision of legal services to the company, obtained legal advice from outside counsel on behalf of T-Mobile, and oversaw T-Mobile's litigation and legal strategy, among other things. *Id.* With respect to the merger, Mr. Miller advised the company on legal issues relating to the transaction and supervised the State AG Action. *Id.* ¶ 12. Mr. Miller did not have a business role at the company, including with respect to T-Mobile's prices or service plans. *Id.* ¶ 13. Thus, the vast majority of his documents relating to the merger will be privileged or attorney work product. *Id.* ¶ 14.

Importantly, Plaintiffs do not dispute that the vast majority of Mr. Miller's documents are privileged communications that fall outside the scope of discovery. Plaintiffs insist that he should

be added as a custodian because he, along with six other people, including existing custodians Mr. Peter Ewens and Mr. Neville Ray, were involved in negotiating the merger. Mot. at 5, Dkt. 195-10. But according to Plaintiffs, this case is not about what happened pre-acquisition and instead is about prices of retail wireless mobile plans *after the merger closed*. *Supra* at 2, 6. Plaintiffs do not explain how any of the pre-merger negotiations bear on the prices of mobile services charged by AT&T and Verizon years after the merger closed. Indeed, during the parties' meet and confer, the sole reason Plaintiffs offered for needing any documents from the pre-acquisition period was to compare the trends in prices and plans between the pre- and post-acquisition periods. Hvidt Decl. ¶ 9. T-Mobile's agreement to produce on a non-custodial basis all documents previously produced to government agencies and the State AGs, including structured data and discussions leading up to the merger agreement, is more than sufficient to allow Plaintiffs to investigate any relevant facts from the pre-merger period. *See* Van Alstyne Decl. ¶ 6.

Unable to identify any documents in Mr. Miller's files that may be relevant to their actual claims, Plaintiffs resort to characterizing Mr. Miller's job as a "business strategist" and speculate that he may have some relevant, non-privileged communications about the merger. Mot. at 5-6. In support, they cite to a press release describing Mr. Miller as an "expert counsel and strategic thinker" and a "strategic advisor" (*id.* at 6 n.11), but none of those descriptors is inconsistent with providing *legal advice*, which was, in fact, Mr. Miller's job: advising the company on *legal* issues and strategy, not acting as a decisionmaker on T-Mobile's prices or plans. *Supra* at 6-7. Plaintiffs also cite an email chain forwarding a draft press release to more than 20 T-Mobile employees, ***11 of whom are custodians T-Mobile agreed to include***, in which Mr. Miller was subsequently removed as the discussion turned to "a business decision." Dkt. 195-11. Far from showing that Mr. Miller is likely to be in possession of unique, relevant information, this email shows that

documents like these would be in the files of other custodians—exactly as T-Mobile stated. Nothing Plaintiffs offer shows why they “expect to discover information from [Mr. Miller] that differs from discovery they have already obtained from the other[s],” as required to add him as a custodian. *Handloser v. HCL America, Inc.*, 2020 WL 7405686, at *2 (N.D. Cal. Dec. 17, 2020); *Coventry Cap. US LLC v. EEA Life Settlements Inc.*, 2020 WL 7383940, at *6 (S.D.N.Y. Dec. 16, 2020) (collecting authorities denying addition of custodians whose documents would be duplicative).

Like Mr. Miller, Plaintiffs’ attempt to establish Mr. Nelson as a relevant custodian fails for lack of evidence or fact. Mr. Nelson joined T-Mobile in October 2021 as Executive Vice President and General Counsel. Van Alstyne Decl. ¶ 15. Mr. Nelson has functioned in the same capacity as Mr. Miller, providing and securing legal advice for T-Mobile. *Id.* His involvement with the merger involves serving as outside litigation counsel for T-Mobile in the State AG Action prior to joining T-Mobile and supervising the instant lawsuit since joining the company. *Id.* Mr. Nelson, like his predecessor, does not have any business role, and nearly all of his documents relating to the merger will be privileged or protected by the work product doctrine. *Id.* ¶ 16. As with Mr. Miller, Plaintiffs speculate that he may have relevant and non-privileged documents because his role might have included a “business strategist” component. Mot. at 6. Plaintiffs are wrong about Mr. Nelson’s job function, and in any event, Plaintiffs “cannot simply rely upon a belief that additional documents must exist” to justify an order adding Mr. Nelson as a custodian. *Lifescan*, 2022 WL 20853087, at *4, *11; *accord Enslin*, 2016 WL 7042206, at *2 (denying motion to add custodians where the moving party failed to specify their relevance beyond asserting that they were “knowledgeable” or possessed “relevant information”). Plaintiffs’ concession that they would have withdrawn Mr. Nelson if T-Mobile accepted their unreasonable proposal underscores this

point: he is not necessary. *See* Mot. at 5.

Plaintiffs fare no better with Ms. Ham. Ms. Ham served as T-Mobile’s Senior Vice President of Government Affairs before her retirement in December 2023. Declaration of Kathleen Ham (“Ham Decl.”) ¶ 3. As a practicing attorney throughout her time at T-Mobile, she provided legal advice to T-Mobile on government policies and regulations impacting the company’s wireless operations, directed legal advice obtained from outside counsel on legal and regulatory matters, and supported litigation and managed regulatory proceedings involving T-Mobile, among other things. *Id.* ¶ 4. She estimates that between 2018 and 2020, 90% of her work related to the merger, and 80% of her communications and documents are either privileged or protected by the work product doctrine. *Id.* ¶ 5. Ms. Ham’s role after the merger closed continued to be legal in nature, working with in-house and outside counsel regarding T-Mobile’s legal and regulatory compliance efforts. *Id.* ¶ 7.

Plaintiffs claim that Ms. Ham “was deeply involved with the merger approval process and T-Mobile’s network and pricing plans in the post-merger world.” Mot. at 6. But Plaintiffs have repeatedly disavowed the notion that this case is about re-litigating the merger approval. *Supra* at 2, 6. And the single document that Plaintiffs cite as “evidence” of her supposed involvement in T-Mobile’s business decisions is an email blast to a list serv forwarding an article published by CMS Wire about the potential impact of 5G on the digital workplace with no mention of T-Mobile at all. Dkt. 195-12. Nothing in this document remotely suggests that Ms. Ham was deeply entrenched in T-Mobile’s business decisions, much less that her files would be a unique repository of documents discussing such matters.

Moreover, Plaintiffs’ incorrect assertion that Ms. Ham was a “lobbyist” for T-Mobile does not make her a proper custodian either. Mot. at 7. As Ms. Ham states in her sworn declaration,

she was not a lobbyist. Ham Decl. ¶ 4. Instead, her work relating to the merger primarily involved giving and seeking legal advice concerning the transaction, as well as anticipated or ongoing litigation. *Id.* ¶¶ 4–5. As the case that Plaintiffs rely on states, “that is certainly the type of communication that the privilege is meant to protect.” *A & R Body Specialty & Collision Works, Inc. v. Progressive Cas. Ins. Co.*, 2013 WL 6044342, at *3 (D. Conn. Nov. 14, 2013) (cleaned up).

At any rate, Plaintiffs do not even explain what relevant “lobbying” documents they expect to find in Ms. Ham’s files, and none of their discovery requests call for any “lobbying” documents. Hvidt Decl. ¶ 12 & Ex. A. Insofar as Plaintiffs are referring to communications with regulatory agencies concerning the merger, T-Mobile agreed to produce such documents on a “go get” basis and already produced over 2,000 such documents, including from the files of T-Mobile’s in-house lawyers. *Supra* at 3.

B. Documents of the Disputed Custodians Are Likely Duplicative of the Agreed-Upon Custodians’ Documents

Including the additional custodians would be duplicative, which alone warrants the denial of Plaintiffs’ motion. *See Broiler*, 2022 WL 621807, at *2–3 (denying additional custodians in part for failing to show that the custodians were “likely have non-duplicative documents”); *Breuder v. Bd. of Trs. of Cmty. Coll. Dist. No. 502*, 2019 WL 3386966, at *7 (N.D. Ill. July 26, 2019) (denying motion to add custodians where doing so “would be unlikely to produce a significant number of relevant and unique documents”).² Plaintiffs offer no basis for their claim that

² The cases cited by Plaintiffs for the proposition that in-house counsel may be appropriate custodians under certain circumstances are inapposite. In each of those cases, the moving party established that a significant number of non-cumulative, non-privileged documents are likely to be in the files of the proposed custodians. *See In re Restasis (Cyclosporine Ophthalmic Emulsion) Antitrust Litig.*, 2018 WL 5094090, at *2 (E.D.N.Y. Oct. 18, 2018) (“plaintiffs have established a likelihood that a significant number of non-cumulative and non-privileged documents will emerge from their request”); *Lamartina v. VMware, Inc.*, 2024 WL 3049450, at *8–9 (N.D. Cal. June 17, 2024) (no dispute that in-house counsel possessed unique, relevant information); *In re Outpatient*

these additional custodians have relevant and unique material beyond what is contained in the files of the 50 ESI custodians agreed to by T-Mobile and the millions of additional documents from non-custodial sources that T-Mobile has already agreed to search. The 50 custodians to which T-Mobile has already agreed include 29 custodians the company determined are most likely to have information responsive to Plaintiffs' discovery requests and 21 custodians proposed by Plaintiffs. Further, the agreed-to list of custodians encompasses *every non-lawyer senior executive* involved in business decisions relevant to this lawsuit, including 14 chief officers (CEOs, CFOs, CTOs, etc.), 6 presidents, 8 executive vice presidents, 5 senior vice presidents, 12 directors, and a chairman. To the extent Mr. Miller or Mr. Nelson was included in non-privileged discussions concerning T-Mobile's business, those communications are likely to also be in the files of other executives who are already custodians, as all of T-Mobile's senior business executives with whom Mr. Miller or Mr. Nelson communicated on a regular basis about the issues presented in this litigation are already included as custodians. Van Alstyne Decl. ¶¶ 13, 16. As for Ms. Ham, her communications that are not privileged or protected by the work product doctrine involved discussions with T-Mobile's corporate communications team headed by Janice Kapner (an existing custodian), outside consultants and advisors, and government agencies. Ham Decl. ¶ 6.

In addition to custodial production, T-Mobile has also agreed to "go get" specific categories of responsive, non-privileged documents on a non-custodial basis, which will likely amount to millions of documents, such as all documents submitted to numerous government agencies and during court proceedings, and numerous other internally created and third party documents. Van Alstyne Decl. ¶ 6; Hvidt Decl. ¶ 3. T-Mobile has already searched for and produced 760,000

Med. Ctr. Emp. Antitrust Litig., 2023 WL 4181198, at *10 (N.D. Ill. June 26, 2023) (in-house counsel added as custodian where moving party demonstrated that the custodian had relevant, unique documents relating to job functions beyond providing legal advice).

documents, totaling over 3.79 million pages and multiple terabytes of data from non-custodial sources, including *thousands* of documents from T-Mobile’s legal personnel. Van Alstyne Decl. ¶¶ 5–6, 22. On top of that, T-Mobile has offered to get other responsive, non-privileged documents from these custodians on a go-get basis as needed. By any applicable standard, T-Mobile has more than satisfied its discovery obligations here, and there is nothing more to gain by adding the three additional in-house counsel as custodians. *Assured Guar. Mun. Corp. v. UBS Real Est. Sec. Inc.*, 2013 WL 1195545, at *3 (S.D.N.Y. Mar. 25, 2013) (denying addition of custodians for lack of evidence that they “would be likely to have non-cumulative relevant documents”); *Breuder*, 2019 WL 3386966, at *7 (same).

C. The Burden and Expense Associated with Adding These Three Additional Custodians Outweigh Any Likely Benefit

Inclusion of the three in-house lawyers as custodians would impose significant burden on T-Mobile with no likely benefit to the Plaintiffs, particularly given that the likelihood of finding any unique, relevant documents unavailable from the existing custodians is extremely low. *Enslin*, 2016 WL 7042206, at *4. As T-Mobile explained to Plaintiffs during the parties’ multiple meet and confers, each of the proposed custodian’s role at T-Mobile centered on providing legal advice. Collecting, processing, and reviewing their data for privileged communications will impose substantial time and expense.

The ESI in the files of Mr. Miller, Mr. Nelson, and Ms. Ham between June 1, 2018 and December 31, 2023, totals 442 gigabytes. Van Alstyne Decl. ¶ 17. Because automated tools typically used to flag privileged material cannot be used on their files, every single responsive document from their files would have to be subject to human privilege review—resulting in significant time and effort. *Id.* ¶ 18. The privilege review of their documents is expected to take over 4,700 additional hours and cost T-Mobile over \$357,000. *Id.* ¶ 20. Moreover, because their

documents are expected to be predominantly privileged or protected by the work product doctrine, redacting documents and/or creating privilege logs would cost an additional \$785,000. *Id.* In total, T-Mobile anticipates that including Mr. Miller, Mr. Nelson, and Ms. Ham as custodians would result in over 15,200 additional hours of work and \$1.14 million additional costs for T-Mobile. *Id.* ¶¶ 20–21. T-Mobile has conducted a reasonable inquiry into individuals at the company likely to have information responsive to Plaintiffs’ discovery requests and agreed to search the files of 50 custodians, including all of the non-legal senior executives requested by Plaintiffs. Undertaking the burden of the additional in-house lawyer custodians is unwarranted given that these custodians are unlikely to have significant (if any) relevant, non-privileged communications or documents that do not involve at least one of the other agreed-upon custodians or are not capable of collection through targeted, go-get searches. Courts routinely reject such disproportionate and burdensome discovery.³

None of Plaintiffs’ arguments compels a different result here. Plaintiffs assert that the burden on T-Mobile can be reduced by de-duplication, Mot. at 8, but T-Mobile’s estimated cost already takes de-duplication into account, Van Alstyne Decl. ¶ 20. Plaintiffs claim that they would be amenable to a modified privilege logging procedure, but that fails to address the significant cost T-Mobile would have to incur to conduct voluminous, human-based privilege review. Plaintiffs argue that this “enormous burden” should nevertheless be imposed on T-Mobile so long as there

³ See, e.g., *N. Cnty. Commc’ns Corp. v. Verizon Glob. Networks, Inc.*, 2012 WL 12870300, at *3 (S.D. Cal. Oct. 31, 2012) (denying motion to compel production of in-house counsel communications because “the vast majority of those communications are subject to attorney-client privilege and work-product protection” and “the expense and effort required to produce it, is overly burdensome”); *Sprint Commc’ns Co. L.P. v. Charter Commc’ns, Inc.*, 2019 WL 3369659, at *1 (D. Del. July 15, 2019) (finding that having to spend at least \$100,000 to create a privilege log made discovery unjustifiably burdensome); *SS&C Tech. Holdings, Inc. v. AIG Specialty Ins. Co.*, 2019 WL 6701857, at *1 (S.D.N.Y. Dec. 9, 2019) (denying motion to add general counsel as custodian because the burden for complying “would be too high”).

is some possibility, no matter how remote, of finding relevant documents. Mot. at 8. But that is contrary to Rules 1 and 26, which direct courts to “move cases through discovery with a focus on efficiency and cost” and only permit discovery that is “proportional to the needs of the case.” *LKQ Corp. v. Kia Motors America, Inc.*, 345 F.R.D. 152, 158 (N.D. Ill. 2023); accord *Enslin*, 2016 WL 7042206, at *3 (“The Federal Rules of Civil Procedure require only a reasonable search for responsive information pursuant to a reasonably comprehensive search strategy,” not perfection). T-Mobile should not be required to expend \$1.14 million to entertain Plaintiffs’ unsupported speculation that there might be something in the files of Mr. Miller, Mr. Nelson, and Ms. Ham. Through the 50 custodians T-Mobile proposed, as well as non-custodial documents T-Mobile has agreed to produce, Plaintiffs have been provided a “reasonable opportunity to investigate the facts- and no more” is required of T-Mobile. *Broiler*, 2022 WL 621807, at *2.⁴ Should discovery from existing custodians reveal that there are responsive, non-privileged documents from the files of Mr. Miller, Mr. Nelson, or Ms. Ham, T-Mobile has already agreed to provide these documents on a go-get basis to the Plaintiffs. Requiring T-Mobile to undertake the burden of reviewing, redacting, and logging tens of thousands of documents is grossly disproportional to any benefits gained by the Plaintiffs and will hinder the just, speedy, and inexpensive resolution of this matter. Plaintiffs’ request is inappropriate at this juncture and, thus, their motion should be denied.

V. CONCLUSION

For the foregoing reasons, Plaintiffs’ motion to compel the addition of Mr. Miller, Mr.

⁴ *Lamartina*, which Plaintiffs cite, is readily distinguishable. Mot. at 8. There, the court ordered a review of in-house counsel’s files totaling about 2,800 documents where there was no dispute that the lawyers possessed unique, relevant information. *Lamartina*, 2024 WL 3049450, at *8–9. Adding Mr. Miller, Mr. Nelson, and Ms. Ham as custodians, by contrast, would require a review of over 120,000 documents. Van Alstyne Decl. ¶ 20. And unlike in *Lamartina*, Plaintiffs have not shown that any of those documents are likely to contain unique, relevant information.

Nelson, and Ms. Ham as custodians should be denied.

DATED: September 11, 2024

Respectfully submitted,

/s/ Rachel S. Brass

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CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2024, I electronically filed a copy of the foregoing through the Court's CM/ECF system, which will send notifications of the filing to all counsel of record.

/s/ Rachel S. Brass

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