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United States District Court
Central District of California

RAMIRO GIRON; NICOLAS J. HERRERA; and ORLANDO ANTONIO MENDEZ,

Plaintiffs,

v.

HSBC BANK USA, N.A.; and DOES 1 through 100, inclusive,

Defendants.

Case No. 2:15-cv-08869-ODW (JCx)

ORDER DENYING MOTION FOR RECONSIDERATION OF MAGISTRATE JUDGE'S ORDER [116]

I. INTRODUCTION

The parties in this action are in the process of completing discovery, and Defendant HSBC USA, N.A. ("HBUS") has taken issue with Magistrate Judge Chooljian's discovery order issued on June 20, 2017. (*See* ECF No. 108.) The order in question requires HBUS to produce unredacted spreadsheets disclosing the names and information of individuals whose wire transfers went through HBUS as an intermediary to Hong Kong. (ECF No. 108.) Not wanting to comply with the order, HBUS moves this Court to reconsider the Magistrate Judge's decision. (ECF No. 116.) For the reasons discussed below, the Court **DENIES** HBUS's motion.[1]

II. FACTUAL BACKGROUND

This case arises from a pyramid scheme where investors were allegedly

[1] After carefully considering the papers filed in support of and in opposition to the Motion, the Court deems the matter appropriate for decision without oral argument and thus **VACATES** the scheduled hearing date. Fed. R. Civ. P. 78; L.R. 7-15.

defrauded. (*See generally* Third Am. Compl. ("TAC"), ECF No. 54.) After United States authorities shut down the operation, the schemers began directing investors to wire money to Hong Kong instead. (*Id.* ¶¶ 25–26.) As a result, Plaintiffs sued the Hong Kong and United States banks that they allege participated in those wire transfers. The case is a putative class action with three named plaintiffs: Ramiro Giron, Nicolas J. Herrera, and Orlando Antonio Mendez. (TAC ¶¶ 6–8.)

The Court dismissed the Hong Kong-based bank on October 21, 2016, for lack of jurisdiction. (ECF No. 72.) As discovery progressed following the dismissal, HBUS claims that the named Plaintiffs discovered that none of their wire transfers used HBUS as an intermediary. (Mot. 1.) Plaintiffs recently sought to discover HBUS's records of wire transfers to Hong Kong bank accounts. (*See id.* at 2.) HBUS argues that this request for production is aimed only at impermissibly "fishing" for new class representatives whose wire transfers used HBUS as an intermediary, unlike the named plaintiffs. (*Id.*) Plaintiffs claim that the reason for requesting the records is much broader and is intended to bolster class certification efforts by helping to establish that a viable class exists. (*See* Opp'n 4, ECF No. 120.) After Judge Chooljian ordered HBUS to produce the records, HBUS filed the instant motion seeking this Court's reconsideration.

III. LEGAL STANDARD

A district court has authority to modify or vacate a magistrate judge's order where it has been shown that the order is "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A); *see also* Fed. R. Civ. P. 72(a). The "clearly erroneous" standard applies to the magistrate judge's findings of fact, and it is "significantly deferential, requiring a definite and firm conviction that a mistake has been committed." *Concrete Pipe & Prods. V. Constr. Laborers Pension Tr.*, 508 U.S. 602, 623 (1993) (internal quotation marks omitted). The second part of the standard in 28 U.S.C. § 636(b)(1)(A), "contrary to law," "permits independent review of purely legal determinations by the magistrate judge." *Crispin v. Christian Audigier, Inc.*, 717 F.

Supp. 2d 965, 971 (C.D. Cal. 2010).

IV. DISCUSSION

The Court determines that the portion of Magistrate Judge Chooljian's discovery order at issue constitutes a question of law. As such, the Court reviews *de novo* whether Plaintiffs are entitled to information relating to individuals whose wire transfers to Hong Kong used HBUS as an intermediary.

A. The Parties' Arguments

In their original motion to compel, Plaintiffs argue that the requested information will establish the existence of a class. (Mot. 2, ECF No. 106.) They note that failing to allow such precertification discovery has been considered an abuse of discretion in the Ninth Circuit. (*Id.*); *see Kamm v. Cal. City Dev. Co.*, 509 F.2d 205, 209 (9th Cir. 1975). Specifically, Plaintiffs claim that they are searching for information to help them satisfy the Federal Rule of Civil Procedure 23 factors of ascertainability, commonality, and typicality. (Mot. 4.) Plaintiffs also cite cases demonstrating that discovery of the names and contact information of putative class members is generally permissible even prior to certification. (Mot. 3); *see, e.g.*, *Putnam v. Eli Lilly & Co.*, 508 F. Supp. 2d 812, 814 (C.D. Cal. 2007); *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 101–02 (1981).

HBUS, in contrast, insists that Plaintiffs' only basis for seeking this information is to search for new class representatives given that the current named plaintiffs did not execute wire transfers using HBUS as an intermediary. (Opp'n 2, ECF No. 107.) HBUS makes its argument on relevance grounds, contending that the requested information is irrelevant because the only purpose it would serve is an impermissible one: to identify potential new class representatives. (*Id.*) In its motion for reconsideration, HBUS cites cases it argues hold that class representatives without standing cannot use discovery to recruit replacement class representatives. *See, e.g.*, *Hatch v. Reliance Ins. Co.*, 758 F.2d 409, 416 (9th Cir. 1985). However, the Court notes that the decision in *Hatch* held that denying a plaintiff's attempt to discover

potential class members to solicit support for class certification is within the district court's discretion, not that a district court must always deny such discovery attempts.

HBUS makes much of the fact that Magistrate Judge Chooljian mentioned in a telephonic conference with the parties that discovery of the information should likely be allowed even with the "understanding that [it] might be for purposes of determining if there is a better plaintiff rep." (Cameron Decl. Ex. A, 22:6–8, ECF No. 116-1.) However, this off-the-cuff reference is not stated as the sole or even primary basis for Judge Chooljian's decision, and further, this Court is required to undertake a *de novo* review of the discovery issue. As such, the Court does not consider Judge Chooljian's statement about Plaintiffs potentially soliciting new class representatives in determining whether the discovery order was erroneous. *See Appell v. Sumner*, 845 F. Supp. 746, 748 (D. Haw. 1994) ("De novo review means the court must consider the matter . . . as if no decision previously had been rendered" (citing *Ness v. Comm'r*, 954 F.2d 1495, 1497 (9th Cir. 1992))).

B. The Court's Assessment

In reviewing this issue *de novo*, the Court sees no question that this information is relevant and discoverable. As Plaintiffs' counsel stated in open court to Magistrate Judge Chooljian, Plaintiffs are "not looking for another plaintiff" in requesting the identities of the individuals who transferred money to Hong Kong through HBUS. (*See* Transcript for Proceedings Held on June 20, 2017, 12:18–19, ECF No. 114.) Plaintiffs' stated intention of identifying class members to support their imminent motion for class certification is valid. *See Putnam*, 508 F. Supp. 2d at 814. Moreover, even if Plaintiffs really are seeking the information for the purpose of recruiting new class representatives, the Ninth Circuit has indicated that blocking such discovery requests is within a district court's discretion, not that it is required. *See Hatch*, 758 F.2d at 416. And, as Judge Chooljian also notes, deciding this issue on the basis of whether Plaintiffs are seeking new class representatives is premature, as there has not been a determination that the current class representatives are not viable. (*See*

Cameron Decl. Ex. A. 21:21–23.)

Finally, the Court is satisfied that disclosure of the unredacted wire transfer spreadsheets does not raise privacy issues that overcome the relevance of the information. While the financial information to be disclosed here is private in nature, it does not rise to the level of "revelation of personal secrets [or] intimate activities" that courts have found should be protected when pertaining to putative class members. *See Artis v. Deere & Co.*, 276 F.R.D. 348, 353 (N.D. Cal. 2011). In addition, there is a strong protective order in this case that provides a baseline level of protection. (*See* ECF No. 89.) Based on these considerations, the Court finds that Magistrate Judge Chooljian's order was not "contrary to law." *See* 28 U.S.C. § 636(b)(1)(A).

V. CONCLUSION

For the reasons discussed above, the Court **DENIES** HBUS's motion for reconsideration. (ECF No. 116.)

IT IS SO ORDERED.

July 20, 2017

OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE