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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

CONNIE DIBEL, BELINDA HAGEN,
VANESSA BROWN, ANN JOHNSON,
LINDA LECIEJEWSKI, TAURUS
ANDERSON, CINDY ILLESCAS, SERENA
LOPEZ, ALISON GAYLORD, VERA
GLUYAS, and KAREN CURRY,
individually and on behalf of all others
similarly situated,

Plaintiffs,

vs.

JENNY CRAIG, INC.; JENNY CRAIG
INTERNATIONAL, INC.; JENNY CRAIG
MANAGEMENT, INC.; JENNY CRAIG
OPERATIONS, INC.; JENNY CRAIG
PRODUCTS, INC.; and JENNY CRAIG
WEIGHT LOSS CENTERS, INC.,

Defendants.

CASE NO. 06CV2533 JLS (AJB)

**ORDER DENYING
DEFENDANT’S OBJECTION TO
RULING OF MAGISTRATE
JUDGE**

(Doc. No. 116)

Presently before the Court is an objection by defendants Jenny Craig, Inc. et al. (collectively, “Jenny Craig”) to the November 1, 2007 Order of Magistrate Judge Anthony J. Battaglia directing Jenny Craig to produce to plaintiffs Connie Dibel et al. the contact information for Jenny Craig’s California employees who neither affirmatively responded to nor opted out of a class action in Los Angeles County Superior Court. For the reasons stated below, the Court denies the objection.

1 **BACKGROUND**

2 **A. State and Federal Actions**

3 This case is a putative collective action alleging violations of the Fair Labor Standards Act
4 and corresponding provisions of the California Labor Code. Briefly summarized, plaintiffs allege
5 that defendants implemented company-wide policies compelling employees to work before and
6 after their scheduled shifts, while receiving pay only for the time worked during the scheduled
7 shift. (First Amended Complaint ¶ 3.) The complaint was filed in California Superior Court on
8 October 4, 2006 and amended on November 15, 2006. (Notice of Removal, Exhibits A & B.)
9 Defendants then removed to this Court on November 17, 2006. (Doc. No. 1.)

10 On June 30, 2006, a proposed class action complaint was filed in Los Angeles County
11 Superior Court. See Cleaves et al. v. Jenny Craig, Inc. et al., Case No. BC354904 (“Cleaves”).
12 The Cleaves complaint sought, *inter alia*, recovery of unpaid wages and overtime, pursuant to
13 provisions of the California Labor Code and other state laws. Cleaves alleges no federal cause of
14 action. (Buckley Decla., Exhibit A.) Cleaves settled in June 2007, and the parties certified two
15 classes of California-based employees exclusively for settlement purposes. (Def. Objection, at 2;
16 Buckley Decla., Exhibit A, at 2.) The notice of proposed settlement sent to class members
17 explained that the settlement “constitute[d] a full and complete settlement and release of all claims
18 arising from, or relating to, the Litigation, including . . . any and all claims under state and federal
19 law” for the relief sought. (Buckley Decla., Exhibit A, at 3.) The notice informed class members
20 that, if they “d[id] nothing” (*i.e.*, neither submitted a claim form nor opted out of the class), they
21 would receive no money in settlement, but would still be bound by the release. (*Id.* at 4.)

22 On July 10, 2007, the Hon. Malcolm Mackey approved the Cleaves plaintiffs’ motion for
23 preliminary approval of the class action settlement. Jenny Craig represents that, at the motion
24 hearing, counsel for plaintiffs in this action objected that the Superior Court lacked the power to
25 waive federal claims with respect to class members who neither filed claims nor opted out of the
26 Cleaves classes. (Objection, at 4.) Judge Mackey’s Order merely states that the Superior Court
27 heard unspecified “Objectors Request for Stay of Order” and “d[id] not find good cause to stay the
28 order.” (Buckley Decla, Exhibit B, at 2.)

1 The plaintiffs in this action then applied to this Court for a temporary restraining order to
2 enjoin Jenny Craig for litigating or settling federal claims of the putative class members in any
3 state court. (Doc. No. 51.) The Hon. Roger T. Benitez¹ denied the application for injunctive
4 relief. (Doc. No. 93 & Buckley Decla., Exhibit C.) Judge Benitez expressly refused to reach the
5 merits of the argument that the Cleaves settlement would amount to a release of federal claims.
6 (Id. at 2-3.) Invoking the Court’s inherent power to control its own docket, Judge Benitez sua
7 sponte stayed plaintiffs’ then-pending motion for class certification until the hearing on the final
8 approval of the Cleaves settlement.² (Id. at 3-4.)

9 On October 31, 2007, Judge Mackey issued a tentative ruling granting a motion for final
10 approval of the class action settlement. (Buckley Decla., Exhibit D.) Judge Mackey expressly
11 acknowledged the objection that “the release of all claims under federal law when the complaint
12 alleged no federal violations interferes with the federal jurisdiction.” (Id. at 4.) The tentative
13 ruling rejected this objection, finding that “class members can only recover[] once for the same
14 wrong committed” and further nothing that California labor law offered broader protection than
15 federal law. (Id. at 10.) The final Order approving the class action settlement was entered on
16 November 14, 2007. (Buckley Decla., Exhibit F.)

17 **B. Magistrate Judge’s Ruling**

18 On November 1, 2007, after Judge Mackey issued the tentative opinion in Cleaves but
19 before the settlement was finally approved, Magistrate Judge Battaglia conducted a telephonic
20 discovery conference. According to the magistrate judge’s Order, Jenny Craig “contend[ed] that
21 the plaintiffs are not entitled to the contact information for the California employees who neither
22 responded or opted out of the pending class action” in Cleaves. (Doc. No. 109 & Buckley Decla.,
23 Exhibit E, at 2.) Defendants further argued that the Cleaves settlement waived the federal claims

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25 ¹ This action was originally assigned to Judge Benitez upon removal from San Diego County
26 Superior Court. The action was then reassigned to the Hon. Janis L. Sammartino on November 9,
2007. (Doc. No. 113.)

27 ² In light of the intervening developments in Cleaves, this Court denied plaintiffs’ class
28 certification motion without prejudice on December 11, 2007. (Doc. No. 127.) During the telephonic
status conference preceding this Order, the Court further noted that defendants had substituted in new
counsel during the stay (and after Jenny Craig had already filed its opposition to class certification).

1 of such employees, thus preventing them from being putative class members in this action.
2 Plaintiffs responded that these putative class members had not waived their claims and were,
3 therefore, entitled to receive notice of the possibility that the federal claims remained viable. To
4 provide such notice, plaintiffs needed defendants to provide the contact information for those
5 putative class members.

6 Magistrate Judge Battaglia ruled for plaintiffs and directed Jenny Craig to provide the
7 contact information of its California employees who neither responded to nor opted out of Cleaves.
8 The magistrate judge reasoned that whether the Cleaves tentative ruling addressed the waiver of
9 federal claims was “immaterial” to the ruling. Defendants specifically object to the magistrate
10 judge’s holding that, “[s]ince the issue of waiver of federal claims for this class of Plaintiff cannot
11 be resolved dispositively by the state court, this Court finds that the information is both relevant
12 and discoverable.” (Doc. No. 109, at 2:18-19.)

13 Jenny Craig filed its objection on November 19, 2007. (Doc. No. 116.) Plaintiffs filed
14 their response in opposition on December 3, 2007. (Doc. No. 121.)

15 LEGAL STANDARD

16 District courts review a magistrate judge’s pretrial order under a “clearly erroneous or
17 contrary to law” standard. Rivera v. NIBCO, Inc., 364 F.3d 1057, 1063 (9th Cir. 2004) (citing
18 Fed. R. Civ. P. 72(a); accord 28 U.S.C. § 636(b)(1)(A)); Bhan v. NME Hosp., Inc., 929 F.2d 1404,
19 1414 (9th Cir. 1991) (stating that a magistrate judge’s decision on nondispositive issues should be
20 reviewed under the “clearly erroneous” standard). As one district court described:

21 This Court’s function, on a motion for review of a magistrate judge’s discovery
22 order, is not to decide what decision this Court would have reached on its own,
23 nor to determine what is the best possible result considering all available
24 evidence. It is to decide whether the Magistrate Judge, based on the evidence and
25 information before him, rendered a decision that was clearly erroneous or
26 contrary to law.

27 Paramount Pictures Corp. v. Replay TV, CV 0-9358 FMC (Ex), 2002 WL 32151632, at * 1 (C.D.
28 Cal. 2002). “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.” United States v. U.S. Gypsum Co., 333 U.S. 364, 395 (1948); see also
Anderson v. Equifax Info. Servs. LLC, No. CV 05-1741-ST, 2007 WL 2412249, at *1 (D. Or.

1 2007) (“Though Section 636(b)(1)(A) has been interpreted to permit de novo review of the legal
2 findings of a magistrate judge, magistrate judges are given broad discretion on discovery matters
3 and should not be overruled absent a showing of clear abuse of discretion.”).

4 **DISCUSSION**

5 Defendant argues that (1) the Los Angeles County Superior Court had the inherent power
6 to release state and federal claims when it approved the settlement in Cleaves and (2) the
7 magistrate judge’s Order denied full faith and credit to the state court’s judgment approving the
8 Cleaves settlement because the magistrate judge held that the state court could not dispositively
9 resolve the federal claims in Cleaves.

10 Defendant’s first argument correctly states the law. State-court litigants (including
11 members of a plaintiff class) have the right to waive the right to litigate federal claims in a federal
12 forum as part of a settlement agreement that includes the release of those federal claims.
13 Matsushita Elec. Indus. Co., Ltd. v. Epstein, 516 U.S. 367, 385 (1996); Howard v. Am. Online
14 Inc., 208 F.3d 741, 748 (9th Cir. 2000).

15 However, defendants’ second argument fails because it reads too much into the magistrate
16 judge’s order. The magistrate judge made no finding as to whether the Cleaves settlement actually
17 included a waiver of federal claims. Instead, the magistrate judge’s order, properly understood,
18 held that this Court would decide the preclusive effect of any waiver of federal claims in the
19 Cleaves settlement.³ This Court will give the Cleaves judgment full faith and credit to the extent
20 authorized by the applicable law, when and if the issue arises during this litigation. While the
21 plaintiffs raised the waiver issue when they applied for injunctive relief, Judge Benitez declined to
22 address their argument, instead relying on principles of abstention, equity, comity, and federalism.
23 (See Doc. No. 93 & Buckley Decla., Exhibit C, at 3 (citing Younger v. Harris, 401 U.S. 37 (1971),
24 and Baffert v. Cal. Horse Racing Bd., 332 F.3d 613 (9th Cir. 2003).) Nor does the magistrate
25 judge’s Order amount to a finding on the preclusive effect of the Cleaves judgment. The

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27 ³ Plaintiffs’ response in opposition phrases the issue nicely: “Magistrate Judge Battaglia
28 correctly concluded that the state court cannot dispositively determine the scope of the class in this
case. That will be determined by the federal court at class certification when the federal court rules
on whether or not class treatment is appropriate and the scope of the class pursuant to Rule 23.”
(Opp., at 2:18-22 (internal citation omitted).)

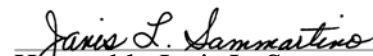
1 magistrate judge merely observed that this Court, rather than the Los Angeles County Superior
2 Court, will make the determination concerning the preclusive effect of the Cleaves judgment.
3 Because any Order on preclusion will issue from this Court, the magistrate judge did not act
4 contrary to law by concluding that the substance of the Cleaves tentative ruling was “immaterial”
5 to the issue of whether plaintiffs could discover the contact information of Jenny Craig’s
6 California who did not respond to the notice of settlement in Cleaves.⁴

7 **CONCLUSION**

8 For the reasons stated herein, the Court **DENIES** defendant’s objection to the ruling of
9 Magistrate Judge Battaglia and **AFFIRMS** the November 1, 2007 Order. If plaintiffs elect to
10 renew their motion for class certification, the parties **SHALL COMPLY** with the briefing
11 schedule previously set forth in this Court’s December 11, 2007 Order.

12 IT IS SO ORDERED.

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14 DATED: February 7, 2008

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16 Honorable Janis L. Sammartino
17 United States District Judge
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24 ⁴ Even if the magistrate judge’s Order was “contrary to law” in its analysis of the impact of the
25 tentative ruling in Cleaves, the Court would nonetheless deny Jenny Craig’s objection on alternative
26 grounds. Federal Rule of Civil Procedure 26(b)(1) entitles a party to discovery of “any matter not
27 privileged, that is relevant to the claim or defense of any party.” Cf. Loustalet v. Refco, Inc., 154
28 F.R.D. 243, 245 (C.D. Cal. 1993). Here, Magistrate Judge Battaglia found that California employees
who did not respond to the Cleaves settlement would have information relevant to plaintiff’s claims
for FLSA violations, e.g., personal knowledge of the facts. (Odenbreit Decla. ¶ 5.) The magistrate
judge further issued a Protective Order pursuant to the joint motion of the parties to address concerns
of privilege and privacy. The magistrate judge’s finding that these California employees would have
knowledge of relevant background facts, regardless of whether they were eligible to participate as
members of the class, is not contrary to law.