

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RICHARD AYERS, JOSE ACOSTA,
FREDERICK ANTHONY BROUSSARD,
JEFFREY WAYNE SCHELL, individually
and on behalf of others similarly situation,

Plaintiffs,

- against -

SGS CONTROL SERVICES, INC. and SGS
NORTH AMERICA, INC.,

Defendants.
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03 Civ. 9078 (RMB) (RLE)

ORDER

I. Background

SGS Control Services, Inc. and SGS North America, Inc. (collectively, "Defendants") object to a Memorandum and Order, dated December 16, 2004, issued by United States Magistrate Judge Ronald L. Ellis ("December 16, 2004 Order"). The December 16, 2004 Order denied Defendants' request for reconsideration of an order of Magistrate Judge Ellis, dated October 22, 2004, which had authorized notice of this action, brought under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 203, 207 et seq., to be sent to a class of persons defined as "employees similarly situated to named plaintiffs [including] all inspector employees who have worked for defendants at any time within the past three (3) years for any work they performed in excess of forty (40) hours each week." (Order of Magistrate Judge Ellis, dated October 22, 2004 ("October 22, 2004 Order"), at 3.) The October 22, 2004 Order further directed Defendants to provide plaintiffs "with the names and addresses of similarly situated employees defined in this

order by October 29, 2004.”¹ (Id.)

For the reason set forth below, Magistrate Judge Ellis’ Orders are affirmed.

II. Standard of Review

“Magistrate judges have broad discretion in resolving nondispositive matters.” Gorman v. Polar Electro, Inc., 137 F. Supp. 2d 223, 227 (E.D.N.Y.2001).² When considering objections to an order issued by a magistrate judge concerning a nondispositive matter the Court “shall modify or set aside any portion of the magistrate judge’s order found to be clearly erroneous or contrary to law.” Fed. R. Civ. P. 72(a); see also 28 U.S.C. § 636(b)(1)(A); Thomas E. Hoar, Inc. v. Sara Lee Corp., 900 F.2d 522, 525 (2d Cir.1990); Thompson v. Keane, No. 95 Civ. 2442, 1996 WL 229887, at *1 (S.D.N.Y. May 6, 1996). An order is “clearly erroneous” only when “the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.” Thompson, 1996 WL 229887, at *1 (citations omitted). See also Siao-Pao v. George, No. 90 Civ. 5376, 1992 WL 236184, at *2 (S.D.N.Y. Sept. 10, 1992). An order is “contrary to law” when it “fails to apply or misapplies relevant statutes, case law or rules of procedure.” Thompson, 1996 WL 229887, at *1 (quoting Securities and Exchange Comm’n v. Thrasher, 92 Civ. 6987, 1995 WL 456402, at *12 (S.D.N.Y. Aug. 2, 1995)).

¹ The October 22, 2004 Order corrected an order dated October 13, 2004 (“October 13, 2004 Order”) by “includ[ing] the modifier ‘inspector’ to describe the employees in the plaintiff class and extend[ing] the compliance date to October 29, 2004.” (December Order at 5.) The October 13, October 22, and December 16, 2004 Orders are herein collectively referred to as the “Orders” or “Magistrate Judge Ellis’ Orders.”

² Authorization of class notice under the FLSA is a “nondispositive matter.” See Fed. R. Civ. P. 72(a) (defining “nondispositive matter” as “a pretrial matter not dispositive of a claim or defense of a party”); 28 U.S.C. § 636(b)(1)(A); see also Ditty v. Check Rite, Ltd., 182 F.R.D. 639, 641 (D. Utah 1998) (describing class notice as “nondispositive matter”).

III. Analysis

Defendants raise substantially the same arguments that were raised before Magistrate Judge Ellis. Having reviewed the record in this case, including, among other things, the Orders, Defendants' Order to Show Cause, dated December 30, 2004, and attached documents, Defendants' Objections to Magistrate's Order Per Fed.R.Civ.P. 72(a), dated December 30, 2004, Plaintiff's Brief in Opposition to Defendants' Order to Show Cause, dated January 14, 2005, and attached documents, as well as the relevant legal authorities, the Court concludes that Magistrate Judge Ellis' Orders are not clearly erroneous or contrary to law. See Fed. R. Civ. P. 72(a); see also Hoffman v. Sbarro, Inc., 982 F. Supp. 249, 261 (S.D.N.Y. 1997).

IV. Conclusion and Order

For the reasons stated above, Magistrate Judge Ellis' Orders are affirmed.

Dated: New York, New York
January 26, 2005



Richard M. Berman, U.S.D.J.