UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 14-05083 RGK (PJWx)	Date	February 23, 2015
Title	***RESH, et al. v. CHINA AGRITECH, INC., et al.***		

Present: The Honorable	R. GARY KLAUSNER, U.S. DISTRICT JUDGE	
Sharon L. Williams (Not Present)	Not Reported	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Not Present	Not Present

Proceedings: **(IN CHAMBERS) Order Re: Plaintiffs' Motion for Reconsideration (DE 45)**

I. INTRODUCTION

On September 4, 2014, Michael H. Resh, William Schoenke, Heroca Holding B.V., and Ninella Beheer B.V. (collectively, "Plaintiffs") filed an Amended Class Action Complaint ("FAC") against China Agritech, Inc. ("China AG") and members of the company's executive management team and board of directors ("Individual Defendants"). Plaintiffs alleged violations of: (1) Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Securities and Exchange Commission ("SEC") Rule 10b-5 against China AG and Individual Defendants; and (2) Section 20(a) of the Exchange Act against Individual Defendants. Among the Individual Defendants named in the FAC was Charles Law ("Law").

Plaintiffs brought this class action on behalf of all persons and entities who purchased the publicly traded common stock of China AG between November 12, 2009 and March 11, 2011. Class actions on behalf of classes identical to that in the present case had been filed with this Court on two prior occasions, in actions entitled *Dean v. China Agritech, Inc.*, No. CV 11-01331-RGK (PJWx) (C.D. Cal. filed Feb. 11, 2011), and *Smyth v. Yu Chang*, No. CV 13-03008-RGK (PJWx) (C.D. Cal. filed Apr. 19, 2012).

On September 22, 2014, China AG and Law filed motions to dismiss the FAC. On December 1, 2014, the Court granted both motions without leave to amend on the ground that Plaintiffs' class action claims were barred by the statute of limitations. (*See* ECF No. 43.)

Presently before the Court is Plaintiffs' Motion for Reconsideration (the "Motion"). For the following reasons, the Court **DENIES** the Motion.

II. JUDICIAL STANDARD

Pursuant to Federal Rule of Civil Procedure 59(e), a "motion to alter or amend a judgment must be filed no later than 28 days after the entry of judgment." A court should grant the motion "sparingly in the interests of finality and conservation of judicial resources." *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). Thus, "amendment or alteration is appropriate . . . if (1) the district court is presented with newly discovered evidence, (2) the district court committed clear error or made an initial decision that was manifestly unjust, or (3) there is an intervening change in controlling law." *O2 Micro Int'l Ltd. v. Monolithic Power Sys., Inc.*, 420 F. Supp. 2d 1070, 1075 (N.D. Cal. 2006).

California Local Rule 7-18 provides that a motion for reconsideration may be made only on the grounds of:

> (a) a material difference in fact or law from that presented to the Court before such decision that in the exercise of reasonable diligence could not have been known to the party moving for reconsideration at the time of such decision, or (b) the emergence of new material facts or a change of law occurring after the time of such decision, or (c) a manifest showing of a failure to consider material facts presented to the Court before such decision. No motion for reconsideration shall in any manner repeat any oral or written argument made in support of or in opposition to the original motion.

C.D. Cal. L.R. 7-18.

A "motion for reconsideration must accomplish two goals. First, a motion for reconsideration must demonstrate reasons why the court should reconsider its prior decision. Second, a motion for reconsideration must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision." *Francis v. Bryant*, CV F 04 5077 AWI, 2006 WL 1627917, at *1 (E.D. Cal. June 7, 2006) (citing *Donaldson v. Liberty Mut. Ins. Co.*, 947 F. Supp. 429, 430 (D. Haw. 1996)). A motion for reconsideration should not be used to reargue the motion or present evidence that should have been presented prior to the entry of judgment. *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009) (citations omitted).

III. DISCUSSION

Plaintiffs base their Motion for Reconsideration on four grounds. The Court addresses each in turn.

A. Tolling of Individual Claims

First, Plaintiffs assert that the Court failed to consider the material "fact" that Plaintiffs' individual claims are tolled and not barred by the statute of limitations. Even assuming this qualifies as a "fact" under subsection (c) of Local Rule 7-18, the Court did not fail to consider it. To the contrary, the Court noted the Ninth Circuit's holding in *Robbin v. Fluor Corporation*, 835 F.2d 213, 215 (9th Cir. 1987), that tolling applies to an individual action even though the class action is barred. (*See* ECF No. 43 at 4 n.1.) In keeping with that holding, the Court held that "the statute of limitations did not toll *as to a class action* during the pendency of the *Dean* or *Smyth* actions," and dismissed "Plaintiffs' class action Complaint with prejudice." (*Id.* at 6 (emphasis added).) As the Court noted in its order dated January 7, 2015, "Plaintiffs are not prevented from filing a complaint asserting individual, rather than class action, claims against [the defendants] if they so choose." (ECF No. 50.)

B. Grounds for Denial of Class Certification in *Dean*

Plaintiffs next argue that the Court erred in finding that it denied class certification in the *Dean* action on the ground that the claims were not suitable for class treatment. In their opposition to China AG's motion to dismiss, Plaintiffs maintained that unless class certification was denied on that ground, rather than due to issues related to the lead plaintiff's suitability as class representative, Plaintiffs' claims were not time-barred.

Yet Plaintiffs simply seek to reargue an issue they already briefed in their opposition. (*See, e.g.*, ECF No. 35 at 7:5-8:19, 9:13-10:9, 12:12-15:18.) This is improper, as "[a] motion for reconsideration is not a vehicle to reargue the motion." *Brown v. U.S.*, Nos. CV 09-8168 ABC, CR 03-847 ABC, 2011 WL 333380, at *3 (C.D. Cal. Jan. 31, 2011) (quotations omitted). To the extent Plaintiffs point to excerpts of the Court's orders in *Dean* or *Smyth* which Plaintiffs did not explicitly quote in their opposition, they impermissibly "present evidence for the first time when [it] could reasonably have been raised earlier in the litigation." *Marlyn Nutraceuticals*, 571 F.3d at 880. Moreover, Plaintiffs do not make a "manifest showing" that the Court failed to consider the language they cite. To the contrary, the Court did consider that language; Plaintiffs simply disagree with the Court's holding.

Also, the Court's holding on this issue was an alternative basis for its decision. The primary holding was that Plaintiffs' class action claims were time-barred regardless of the grounds on which class certification was denied in the two earlier actions. (*See* ECF No. 43 at 4-5.) Thus, even if Plaintiffs' argument had merit (it does not), it would not provide a basis for the Court to alter or amend the judgment.

C. Plaintiffs' Citation to *Robbin v. Fluor Corp.*

Plaintiffs take issue with the Court's statement that "Plaintiffs do not address *Robbin* [*v. Fluor Corporation*, 835 F.2d 213 (9th Cir. 1987)]." (ECF No. 43 at 4.) Plaintiffs point out that they did reference *Robbin* at the end of their opposition to China AG's motion, in a section addressing China AG's public policy arguments. (*See* ECF No. 35 at 19:19-20:17.)

However, read in context, the Court's statement highlighted the fact that Plaintiffs did not address *Robbin* in analyzing the Ninth Circuit's application of the two seminal Supreme Court cases addressing tolling in the class action context, *American Pipe & Construction Company v. Utah*, 414 U.S. 538 (1974), and *Crown, Cork & Seal Company v. Parker*, 462 U.S. 345 (1983). Instead, Plaintiffs skipped over that case, which the Court found to be on point, and cited to the Ninth Circuit's later decision in *Catholic Social Services v. I.N.S.*, 232 F.3d 1139 (9th Cir. 2000). (*See* ECF No. 35 at 12:12-15:10.) Further, Plaintiffs' attempt to distinguish *Robbin* near the end of their opposition was part of an argument that the Court considered and rejected - that Plaintiffs were not attempting to relitigate earlier denials of class certification. (*See id.* at 20:5-17; ECF No. 43 at 5-6.)

Therefore, Plaintiffs have not shown that the Court failed to consider a material fact, and the Court's statement regarding Plaintiffs' opposition is not a basis for altering or amending the judgment.

D. *Natan v. Citimortgage, Inc.*

Finally, Plaintiffs argue that *Natan v. Citimortgage, Inc.*, CV 14-5779 DSF, 2014 U.S. Dist. LEXIS 143280 (C.D. Cal. Oct. 1, 2014), supports their argument that the statute of limitations was tolled as to their class action claims. However, *Natan* was issued five (5) days before Plaintiffs filed their oppositions on October 6, 2014, and thus does not qualify as "a material difference in . . . law that in the exercise of reasonable diligence could not have been known" to Plaintiffs, or "a change of law occurring after" the Court's decision. *See* C.D. Cal. L.R. 7-18(a), (b).

Additionally, *Natan* addressed the circumstances in which an *individual claim* should be tolled

due to the pendency of a class action. It did not address the tolling of subsequent class action claims. *Natan*, 2014 U.S. Dist. LEXIS 143280, at *2-4. Therefore, *Natan* does not support Plaintiffs' argument, and certainly does not warrant altering or amending the judgment.

IV. CONCLUSION

For the foregoing reasons, the Court **DENIES** Plaintiffs' Motion.

IT IS SO ORDERED.

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Initials of Preparer _____