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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JASVEER SINGH; JESUS MIER; and  
TOMMIE PRUITT,

2:05-CV-0521-MCE-DAD

Plaintiffs,

v.

MEMORANDUM AND ORDER

YELLOW TRANSPORTATION, INC.  
DBA YELLOW FREIGHT;  
INTERNATIONAL BROTHERHOOD of  
TEAMSTERS, LOCAL UNION #439,  
DANIEL DRAKE, ROGER PRICE,  
FRANK VELLA and DOES 1 - 20,

Defendants.

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In bringing the present action, Plaintiffs Jasveer Singh ("Singh"), Jesus Mier ("Mier") and Tommie Pruitt ("Pruitt") (collectively "Plaintiffs") allege that Defendant Yellow Transportation, Inc. ("Yellow") subjected them to discrimination, harassment, and retaliation in violation of their rights under 42 U.S.C. § 1981 and the California Fair Employment and Housing Act ("FEHA"), California Government Code §§ 12900-12996.

1 On May 5, 2005, Yellow moved for summary judgment.<sup>1</sup> The  
2 Court concluded in a Memorandum and Order dated October 11, 2006,  
3 ("MSJ Order") that summary judgment in favor of Yellow was  
4 appropriate. The Court entered judgment in favor of Yellow and  
5 the case was thereafter closed. On October 23, 2006, Plaintiffs  
6 filed separate but virtually identical Motions for  
7 Reconsideration of the Court's previous Order granting summary  
8 judgment.<sup>2</sup> Those Motions for Reconsideration shall be considered  
9 collectively below. For the reasons set forth herein,  
10 Plaintiffs' Motions are granted.

11  
12 **BACKGROUND**

13  
14 The Court has already set forth a detailed factual  
15 background for this action in its Order dated October 11, 2006,  
16 which is incorporated by reference and need not be reproduced  
17 herein. MSJ Order 2-5, October 11, 2006.

18 As noted in this Court's MSJ Order, Plaintiffs failed to  
19 comply with the Eastern District's Local Rules regarding the  
20 submission of statements filed by a party opponent.

21  
22 \_\_\_\_\_  
23 <sup>1</sup>Because there are three Plaintiffs in this matter with very  
24 similar but independent claims, Yellow filed three separate  
25 Motions for Summary Judgment. Given the striking similarity of  
26 the facts giving rise to all three Plaintiffs' claims and the  
27 similarity of the legal arguments presented in support of their  
28 dismissal, the Court addressed all three Motions for Summary  
Judgment collectively in its MSJ Order. For ease and clarity,  
those three Motions for Summary Judgment shall be referenced  
herein as the "MSJ Motions."

<sup>2</sup> Because oral argument will not be of material assistance,  
the Court ordered this matter submitted on the briefs. E.D. Cal.  
Local Rule 78-230(h).

1 Rather, Plaintiffs submitted a single 29 page Opposition to  
2 Yellow's MSJ Motions and merely incorporated by reference a 197  
3 page Statement of Undisputed Facts. Plaintiffs' Opposition was  
4 clearly in violation of this Court's Pretrial Scheduling Order in  
5 that it exceeded the page limit set forth therein. In addition,  
6 Plaintiffs' Statement of Facts was not only unduly expansive in  
7 violation of Local Rule 56-260(b), it was also redundant in  
8 merely duplicating largely objectionable declarations and witness  
9 statements. Nonetheless, the Court considered Plaintiffs' papers  
10 and concluded in its October 11, 2006, Order that Summary  
11 Judgment in favor of Defendants was appropriate. These Motions  
12 for Reconsideration followed.

13  
14 **STANDARD**

15  
16 A court should be loathe to revisit its own decisions unless  
17 extraordinary circumstances show that its prior decision was  
18 clearly erroneous. *Christianson v. Colt Indus. Operating Corp.*,  
19 486 U.S. 800, 816, 108 S. Ct. 2166, 100 L. Ed. 2d 811 (1988).  
20 This principle is generally embodied in the law of the case  
21 doctrine. That doctrine counsels against reopening questions  
22 once resolved in ongoing litigation. *Pyramid Lake Paiute Tribe*  
23 *of Indians v. Hodel*, 882 F.2d 364, 369 (9th Cir. 1989).  
24 Nonetheless, under certain limited circumstances, the court has  
25 discretion to reconsider its prior decisions.

26 A motion for reconsideration is treated as a Rule 59(e)  
27 motion if filed within ten days of entry of judgment, but as a  
28 Rule 60(b) motion if filed more than ten days after judgment.

1 See *Am. Ironworks & Erectors Inc. v. N. Am. Constr. Corp.*, 248  
2 F.3d 892, 898-99 (9th Cir. 2001). Since this motion is seeking  
3 reconsideration of a final judgement and was filed more than ten  
4 days after the entry of judgment, the Court will treat it as a  
5 Rule 60(b) motion.

6 Rule 60(b) enumerates the grounds upon which a motion for  
7 relief from an order or judgment may be made. It specifies that:

8 On motion and upon such terms as are just, the  
9 court may relieve a party or a party's legal  
10 representative from a final judgment, order, or  
11 proceeding for the following reasons: (1) mistake,  
12 inadvertence, surprise or excusable neglect; (2) newly  
13 discovered evidence which by due diligence could not  
14 have been discovered before the court's decision; (3)  
15 fraud by the adverse party; (4) the judgment is void;  
16 (5) the judgment has been satisfied; or (6) any other  
17 reason justifying relief.

18 Fed. R. Civ. Proc. 60(b). Mere dissatisfaction with the court's  
19 order, or belief that the court is wrong in its decision, are not  
20 grounds for relief under Rule 60(b).

#### 21 **ANALYSIS**

22 Motions for relief from judgment pursuant to Rule 60(b) are  
23 addressed to the sound discretion of the district court. *Casey*  
24 *v. Albertson's Inc.*, 362 F.3d 1254, 1257 (9th Cir. 2004)  
25 (internal citations omitted). Plaintiffs here allege the Court  
26 should reverse its earlier ruling on the ground that it "ignores  
27 the reasonable inference, from all the evidence that Yellow  
28 should have known" of the racial discrimination and harassment.  
See generally Plf.s' Mem. of Pts. and Auth. in Support of the  
Motion for Reconsideration.

1 In addition, Plaintiffs argue that the MSJ Order should be  
2 reversed because the Court did not "look past Yellow's paper  
3 reiteration of policy" which would have permitted the Court to  
4 see that Yellow did not, in fact, take sufficient remedial  
5 measures to stem the discrimination and harassment. *Id.*

6 As an initial matter, Plaintiffs' Motion for Reconsideration  
7 does not challenge the Court's MSJ Order with respect to Section  
8 I (Racial Discrimination under 42 U.S.C. § 1981). In addition,  
9 with respect to Section III (Retaliation), Plaintiffs only curtly  
10 mention in footnote 3 of their brief that a "campaign of  
11 harassment by co-workers, if known and not corrected...[may  
12 support] a retaliation claim." Plaintiffs cite non-binding  
13 authority for this newly presented proposition as well as mis-  
14 cite the case itself. The Court shall not consider this  
15 improperly cited authority nor shall it construe this footnote as  
16 a challenge to the Court's summary adjudication of Plaintiffs'  
17 retaliation claim. Consequently, the present Motion for  
18 Reconsideration shall be deemed as challenging only the Court's  
19 ruling on Plaintiffs' Hostile Work Environment claim.

20 As noted above, Plaintiffs argue that the Court ignored the  
21 "reasonable inference" that Defendant Yellow should have known of  
22 the racial harassment well in advance of September 2003, the date  
23 the Court concluded Defendant, in fact, had knowledge. Further,  
24 Plaintiffs argue the remedial action taken by Defendant Yellow to  
25 eradicate the harassment was inadequate, a position in direct  
26 conflict with the Court's holding.

27 Before reaching the merits of the foregoing arguments, the  
28 Court notes that Plaintiffs submitted in excess of 1600 pages in

1 support of their opposition to Defendant's Motion for Summary  
2 Judgment. Included were Exhibits Vol. I (1-10) to Plf.s' Opp. to  
3 Def.'s Motion for Summary Judgment/Summary Adjudication by  
4 Jasveer Singh, Jesus Mier, Tommy Pruitt, Docket No. 97 (125  
5 pages) ("Exhibits"); Exhibits Vol. I (11-20), Docket No. 98 (31  
6 pages); Exhibits Vol. I (21-30), Docket No. 99 (40 pages);  
7 Exhibits Vol. I (31-38), Docket No. 100 (19 pages); Exhibits Vol.  
8 II (39-48), Docket No. 101 (30 pages); Exhibits Vol. II (49-58),  
9 Docket No. 102 (29 pages); Exhibits Vol. II (59-68), Docket No.  
10 103 (50 pages); Exhibits Vol. II (69-71), Docket No. 104 (94  
11 pages); Exhibits Vol. III (72-76), Docket No. 105 (248 pages);  
12 Exhibits Vol. III (77), Docket No. 106 (97 pages); Exhibits Vol.  
13 III (78-84), Docket No. 107 (335 pages); Stmt. of Facts in  
14 Support of Plf.s' Opp. to Def.'s Motion for Summary  
15 Judgment/Summary Adjudication by Jasveer Singh, Jesus Mier, Tommy  
16 Pruitt, Docket No. 108 (197 pages); Mem. of Pts. and Auth. in  
17 Opp. to Def.'s Motion for Summary Judgment/Summary Adjudication  
18 by Jasveer Singh, Jesus Mier, Tommy Pruitt, Docket No. 111 (29  
19 pages); Resp. to Def.'s Separate Stmt. of Undis. Facts in Support  
20 of Motion for Summary Judgment/Adjudication by Tommy Pruitt,  
21 Docket No. 114 (90 pages); Resp. to Def.'s Separate Stmt. of  
22 Undis. Facts in Support of Motion for Summary  
23 Judgment/Adjudication by Jasveer Singh, Docket No. 115 (78  
24 pages); and Resp. to Def.'s Separate Stmt. of Undis. Facts in  
25 Support of Motion for Summary Judgment/Adjudication by Jasveer  
26 Singh, Docket No. 115 (114 pages).

27 In addition to the foregoing, Plaintiffs filed a declaration as  
28 well as evidentiary objections and a request for permission to

1 submit additional briefing. See Docket No.s 144, 145, 146, 152.

2 Despite this mass of documentation, Plaintiffs' 29 page  
3 Opposition brief is notable in that it includes but a single  
4 citation to the record and that citation speaks only to alleged  
5 retaliation suffered by Plaintiffs as a result of lodging  
6 complaints. See Mem. of Pts. and Auth. in Opp. to Def.'s Motion  
7 for Summary Judgment/Summary Adjudication by Jasveer Singh, Jesus  
8 Mier, Tommy Pruitt, Docket No. 111, Page 26. Plaintiffs failed  
9 entirely to cite the Court to any issues of material fact  
10 regarding Defendant's notice of the harassment or inadequate  
11 remedial measures being undertaken to halt the harassment.

12 When considering a motion for summary judgment, the Court  
13 does not have an obligation to "scour the record in search of a  
14 genuine issue of triable fact." *Keenan v. Allan*, 91 F.3d 1275,  
15 1279 (9th Cir. 1996). As another court has famously stated,  
16 "judges are not like pigs, hunting for truffles buried in the  
17 briefs." *U.S. v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991).

18 Despite these glaring issues with Plaintiffs' Opposition,  
19 Plaintiffs' Motion for Reconsideration does what their Opposition  
20 did not; namely point to the relevant issues of material fact.  
21 Plaintiffs' Motion for Reconsideration directs the Court to  
22 issues of fact contained in the record regarding Defendant's  
23 knowledge of the alleged harassment as well as the adequacy of  
24 Defendant's response to the alleged harassment.

25 Specifically, Plaintiff Mier contends Defendants had been on  
26 notice of the harassment because "Drake called [Mier] a "wetback"  
27 and a "fucking wetback" in a loud voice, in open spaces, *in front*  
28 *of supervisors.*" Plf.s' Stmt. Undisp. Fact, ¶ 121 (emphasis

1 added). Further, Singh explained that the name-calling occurred  
2 often in front of an SOM "Hot Rod" or Rodney, and Manager Dave  
3 Lujan. *Id.* at ¶ 288. Singh contended "[i]t happened right under  
4 [Lujan's] nose, 10 feet, 12 feet, 20 feet [away]." *Id.*

5 Given the existence of these facts, it now appears there is  
6 an issue of material fact regarding Defendant's notice of the  
7 harassment. Accordingly, summary judgment on the issue of  
8 Defendants' notice should not have been accorded.

9 With respect to Plaintiffs' argument that Defendant did not  
10 take sufficient remedial measures to defeat summary judgment,  
11 again Plaintiffs' Motion for Reconsideration does what their  
12 Opposition did not. Specifically, Plaintiffs' Motion for  
13 Reconsideration cites facts in support of their position that  
14 Defendant's response was insufficient. Plaintiffs rebut the  
15 Court's conclusion that Defendant engaged in prompt measures  
16 calculated to stem the harassment by pointing to facts arguably  
17 indicating otherwise. For example, Plaintiffs contend that the  
18 Human Resources Manager responsible for the investigation, Don  
19 Pochowski, did not take notes when he interviewed dock workers  
20 apparently evidencing that his investigation was a mere pretense.  
21 *Id.* at ¶ 515.

22 Further, Plaintiffs contend Pochowski did not talk to any  
23 Union representatives about whether or not they had received  
24 complaints from dockworkers or about what the Union might be able  
25 to do in terms of obtaining complaints about incidents of alleged  
26 harassment. *Id.* at ¶ 524. These facts, now uncovered, are  
27 sufficient to warrant relief from the Court's Order granting  
28 summary judgment on the issue of remedial measures calculated to



1 terminate the harassment.  
2

3 **CONCLUSION**

4 For the reasons set forth fully above, Plaintiffs Motion for  
5 Reconsideration is GRANTED. The Court's MSJ Order granting  
6 Summary Judgment on Plaintiffs' claim of Hostile Work Environment  
7 is hereby vacated. The Court's MSJ Order in all other respects  
8 remains fully in force.

9 All parties are cautioned that pleadings which do not in the  
10 future comply with the letter as well as the spirit of the  
11 Court's rules will be summarily rejected and returned to the  
12 parties. The court may impose additional sanctions on the  
13 offending party(ies) as the Court deems appropriate.\

14 Dated: June 21, 2007

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17 MORRISON C. ENGLAND, JR.  
18 UNITED STATES DISTRICT JUDGE  
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