Wilson v. Tesla, Inc. Doc. 66

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BRIAN WILSON, et al.,

Plaintiffs,

v.

TESLA, INC., et al.,

Defendants.

Case No.17-cv-03763-JSC

ORDER RE: PLAINTIFFS' RULE 60(B) MOTION

Re: Dkt. No. 63

Plaintiffs Brian Wilson, Carrie Hughes, and Katia Segal filed this wage and hour class action against their employer, Tesla, Inc. and Tesla Motors, Inc. alleging that Tesla misclassified them as exempt employees and failed to provide them overtime, rest and meal breaks, wage statements, and final wages. While the case quickly settled with no motion practice, there is has been considerable motion practice regarding Plaintiffs' efforts to obtain preliminary and final approval of the class action settlement. After repeated go round of hearing and briefing to resolve issues with the parties' settlement and Plaintiffs' efforts to obtain approval of said settlement, the Court granted final approval of the class action settlement and entered judgment in Plaintiffs' favor. (Dkt. No. 56.) Plaintiffs have now filed a motion for reconsideration of the Court's order on attorneys' fees and costs and the class representative incentive award under Federal Rule of Civil Procedure 60(b)(1) and (6). (Dkt. No. 63.) After carefully considering Plaintiffs' motion, the Court concludes that oral argument is unnecessary, see Civ. L.R. 7-1(b), VACATES the September 12, 2019 hearing, and DENIES Plaintiffs' motion for relief from judgment.

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BACKGROUND

Brian Wilson filed this action under the Class Action Fairness Act (CAFA), 28 U.S.C. § 1715, in June 2017 asserting seven claims for relief: (1) failure to pay overtime wages in violation of the FLSA; (2) failure to pay minimum wage in violation of California Labor Code section 1194; (3) failure to pay overtime in violation of California Labor Code sections 519 & 1194; (4) failure to provide meal breaks in violation of California Labor Code section 226.7 and IWC Order No. 4-2001; (5) failure to provide rest breaks in violation of California Labor Code section 226.7 and IWC Order No. 4-2001; (6) failure to provide proper wage statements in violation of California Labor Code section 226(a); and (7) unlawful business practices in violation of California Business & Professions Code section 17200 et seq. (Dkt. No. 1.) Prior to Tesla's appearance, Plaintiff amended the complaint to add Plaintiff Hughes and add a claim for failure to pay final wages in violation of California Labor Code sections 201 and 202. (Dkt. No. 10.)

The parties engaged in an early mediation in November 2017 and resolved the dispute with the terms finalized in May 2018. (Dkt. No. 22-1 at ¶ 13.) On the same day Plaintiffs filed their motion for preliminary approval, they filed a second amended complaint adding Plaintiff Segal, adding a PAGA claim, and withdrawing the FLSA claim. (Dkt. No. 21.) The Court subsequently denied the motion for preliminary approval based on numerous issues with the notice and settlement. (Dkt. Nos. 24, 30.) Plaintiffs then filed a renewed motion for preliminary approval. (Dkt. No. 29.) The Court held a hearing on August 30, 2018 and raised additional concerns regarding notice and ordered Plaintiffs to file a new notice by September 13, 2018. (Dkt. No. 31.) Plaintiffs addressed the Court's concern and the Court granted the renewed motion for preliminary approval on September 26, 2018. (Dkt. No. 33.) When Plaintiffs failed to file their motion for attorneys' fees and costs by the deadline set by the Court's Order and failed to otherwise comply with portions of the Court's Order, the Court ordered Plaintiff to file a status report. (Dkt. No. 36.) The Court then held a status conference at which the parties apprised the Court of numerous issues which had arisen. (Dkt. No. 42.) In light of these issues, the parties submitted a modified settlement agreement and notice for the Court's approval. (Dkt. No. 43.) The Court granted the stipulation to modify the Settlement Agreement and Notice and set the Final Approval Hearing for

April 4, 2019. (Dkt. No. 44.) Plaintiffs filed their attorneys' fees motion on January 11, 2019. (Dkt. No. 29.) Additional issues arose requiring yet another status conference and the motion for final approval was finally filed on March 21, 2019. (Dkt. Nos. 50, 51.)

The final approval hearing was held on April 4, 2019. (Dkt. No. 52.) Because Telsa advised the Court at the final approval hearing that it had not sent notice to the relevant authorities as CAFA requires, see 28 U.S.C. § 1715(b), the Court could not issue its final approval order until 90 days after such notice was provided. See 28 U.S.C. § 1715(d). On April 9, 2019, Telsa provided notice to the relevant authorities in accordance with Section 1715(b). (Dkt. No. 53.) On July 8, 2019, the Court filed its order granting final approval of the class action settlement and granting in part and denying in part Plaintiffs' motion for attorneys' fees and costs and incentive awards for the class representatives (hereafter "the Order"). (Dkt No. 56.) The Court entered judgment in Plaintiffs' favor the same day. (Dkt. No. 57.)

Two days after the Court issued its Order, Plaintiffs filed a motion for leave to file a motion for reconsideration under Local Rule 7-11. (Dkt. No. 58.) The Court denied the motion as procedurally improper because Local Rule 7-11 governs administrative motions during the pendency of an action and the action had been terminated and judgment entered in Plaintiffs' favor. (Dkt. No. 59.) The Court advised Plaintiffs that there were two ways to seek substantive reconsideration of an order following entry of judgement: (1) Federal Rule of Civil Procedure 59(e) (motion to alter or amend a judgment), or (2) Federal Rule of Civil Procedure 60(b) (motion for relief from judgment). (Id.) Plaintiffs thereafter filed the now pending motion for reconsideration under Rule 60(b)(1) which Defendant does not oppose. (Dkt. No. 63.)

DISCUSSION

A. Legal Framework

Rule 60(b) provides for reconsideration only upon a showing of: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud by the adverse party; (4) the judgment is void; (5) the judgment has been satisfied; or (6) any other reason justifying relief. See Fed. R. Civ. P. 60(b); School Dist. 1J v. ACandS Inc., 5 F.3d 1255,

1263 (9th Cir. 1993).

Plaintiffs contend that relief is appropriate under Rule 60(b)(1) for mistake and (6) to prevent manifest injustice. A "mistake" under Rule 60(b)(1) includes where "the district court has made a substantive error of law or fact in its judgment or order." *Bretana v. Int'l Collection Corp*., 2010 WL 1221925, at *1 (N.D. Cal. 2010) (citing Utah ex. Rel. Div. of Forestry v. United States, 528 F.3d 712, 722–23 (10th Cir. 2008) ("Rule 60(b)(1) motions premised upon mistake are intended to provide relief to a party ... when the judge has made a substantive mistake of law or fact in the final judgment or order.")). Rule 60(b)(6) is known as a catch-all provision which allows relief "only where extraordinary circumstances prevented a party from taking timely action to prevent or correct an erroneous judgment." United States v. Alpine Land & Reservoir Co., 984 F.2d 1047, 1049 (9th Cir. 1993).

A Rule 60(b) motion is not a vehicle for plaintiffs to reargue issues previously decided by the court. See Am. Ironworks & Erectors, Inc. v. N. Am. Const. Corp., 248 F.3d 892, 899 (9th Cir. 2001) (finding that denial of Rule 60(b) motion was not an abuse of discretion where parties "simply reargued their case"); Garcia v. Biter, 195 F. Supp. 3d 1131, 1133 (E.D. Cal. 2016) ("A motion for reconsideration may not be used to get a second bite at the apple.") (citation omitted); United States v. Westlands Water District, 134 F. Supp. 2d 1111, 1131 (E.D. Cal. 2001) ("A motion for reconsideration is not a vehicle to reargue the motion or to present evidence which should have been raised before.").

B. Analysis

Plaintiffs raise five issues with respect to the Court's Order; none warrants relief under Rule 60(b)(1) or (6). Plaintiffs have failed to demonstrate either that the Court made a mistake of fact or law in its Order or that there are otherwise extraordinary circumstances which justify relief so as to "prevent manifest injustice." Lehman v. United States, 154 F.3d 1010, 1017 (9th Cir. 1998).

First, Plaintiffs lament that the Court did not advise counsel at the final approval hearing that it intended to reduce the attorneys' fees and costs award or the incentive awards. Plaintiffs fundamentally misunderstand motion and hearing practice if they believe that the Court is required

to preview its thinking with respect to the motions before it and give the parties the opportunity to be heard on every issue. Oral argument is at the judge's discretion. See Fed. R. Civ. P. 78(b); Civ. L.R. 7-1(b); see also Partridge v. Reich, 141 F.3d 920, 926 (9th Cir. 1998) ("a district court can decide the issue without oral argument if the parties can submit their papers to the court."). Plaintiffs had notice that the Court had concerns both with the request for attorneys' fees and the incentive award. The Court's preliminary approval order stated that

> Plaintiffs have thus failed to persuade the Court that attorneys' fees of 33.3 percent of the fund are appropriate; however, the Court will wait until final approval to make a determination as to fees. Along with the parties' final approval filings with the Court, Plaintiffs shall submit detailed billing records and an explanation of their counsels' hourly rate so that the Court may determine an appropriate lodestar figure.

(Dkt. No. 33 at 15:4-8 (citing Bluetooth, 654 F.3d at 944–45).) Likewise, with respect to the incentive payment, the Court stated that "Plaintiffs' request for a $10,000 incentive award each is higher than the amount generally awarded by courts in this district." (Dkt. No. 33 at 11:7-8.) Plaintiffs thus had fair warning about the Court's concerns and an opportunity to present any evidence regarding their request for attorneys' fees and costs and an incentive award to the Court with their final approval motion. See Partridge, 141 F.3d at 926 ("A district court's failure to grant an oral hearing on a motion [] does not constitute reversible error in the absence of prejudice. When a party has [had] an adequate opportunity to provide the trial court with evidence and a memorandum of law, there is no prejudice since any error can be rectified on appeal").

Second, Plaintiffs contend that the Court erred when it asked for counsels' detailed billing records at the final approval hearing, but did not advise counsel that they should explain any discrepancy between the lodestar amount that appeared in their motion for attorneys' fees ($160,895) and the total on the detailed billing records ($231,889.25). Plaintiffs repeatedly insist that Court "told Class Counsel not to file anything else with the records." (Dkt. No. 63 at 6:27-28; 10:2-3; 20:16-17, 22-23.) However, as the transcript of the hearing demonstrates, the Court told counsel that they did not need to file a motion in order to file the billing records under seal—not that counsel did not need to submit a cover letter or explanatory document with the billing records. (Dkt. No. 62 at 4-5.) Common sense would dictate that if you are going to submit something to

the Court that reflects a $70,0000 discrepancy between your actual billing records and the summary you provided to the Court that you would explain it.

Third, Plaintiffs contend that the Court erred in its lodestar calculation. However, the Court used the lodestar that counsel insists is the correct lodestar—the one in the motion for attorneys' fees. In reviewing the reasonableness of counsels' fee request, the Court used the detailed billing records because the exceedingly broad and vague categories in the chart which accompanied the motion for attorneys' fees were inadequate to allow the Court to evaluate the reasonableness of the hours expended.[1] See Hensley v. Eckerhart, 461 U.S. 424, 437 (1983) ("Beyond establishing a reasonable hourly rate, a party seeking attorneys" fees bears the burden to "document[ ] the appropriate hours expended."). Indeed, the Northern District of California's Procedural Guidance for Class Action Settlements—on which Plaintiffs rely—states that:

> Declarations of class counsel as to the number of hours spent on various categories of activities related to the action by each biller, together with hourly billing rate information may be sufficient, provided that the declarations are adequately detailed. Counsel should be prepared to submit copies of billing records themselves at *the court's order.*

See https://cand.uscourts.gov/ClassActionSettlementGuidance (emphasis added).

Here, the Court found that the chart was not adequately detailed and thus relied on the detailed billing records. In doing so, the Court identified four issues in the detailed billing records which gave it concern regarding the reasonableness of the hours expended: (1) the request for fees for work the Court ordered them to redo; (2) billing of over 60 hours for travel time; (3) excessive block billing entries; and (4) inconsistent billing records—for example, billing records for work done in the future. Counsel insists that they already exercised billing judgment to reduce the amount of fees sought by 134 hours which would ameliorate or off-set any concern that might exist regarding the reasonableness of the requested hours. Leaving aside that counsel could and should have explained this when offering the detailed billing records, the chart which accompanied the motion for attorneys' fees—and which counsel insists contains the correct

[1] Plaintiffs insist that "the format of Class Counsel's billing has been approved in numerous cases" but have not provided a citation to a single case approving this format. (Dkt. No. 63-4 at ¶ 2.)

lodestar—likewise contains the issues the Court identified. That is, counsel sought over $10,000 for work spent on the second motion for preliminary approval and included large amounts of time for traveling to the mediation and court hearings for both Ms. Martin and Ms. David despite the fact that as the Court noted, counsel presumably was working on other matters or could have been during this travel time. (Dkt. No. 47-3 at 8.) Most critically for purposes of the instant motion, despite these concerns, **the Court accepted the lodestar presented in the motion for attorneys' fees**—the very lodestar Plaintiffs now insist the Court erred in failing to use. (Dkt. No. 56 at 22:14-15 ("Plaintiffs' lodestar is $160,895; however, Plaintiffs seek a fee award of $256,689 which would result in a multiplier of 1.595.").

At bottom, Plaintiffs' complaint is that the Court declined to award a multiplier when using the lodestar rather than the percentage-of-the-fee method for awarding attorneys' fees. However, "[t]he choice of a fee calculation method is generally one within the discretion of the trial court, the goal under either the percentage or lodestar approach being the award of a reasonable fee to compensate counsel for their efforts." *Lafitte v. Robert Half Int'l Inc*., 1 Cal. 5th 480, 504 (2016). Here, the Court found that the lodestar method provided the most reasonable fee award because counsels' performance in this action did not warrant a 1.595 multiplier which is what a 25% of the recovery award would have resulted in. Under California law, "[o]nce the court has fixed the lodestar, it may increase or decrease that amount by applying a positive or negative 'multiplier' to take into account a variety of other factors, including the quality of the representation, the novelty and complexity of the issues, the results obtained, and the contingent risk presented." Thayer v. Wells Fargo Bank, N.A., 92 Cal. App. 4th 819, 833 (2001), as modified (Oct. 25, 2001) (internal citation omitted).

In their motion for attorneys' fees, counsel argued that a 1.595 multiplier was warranted because of the results of the action, the contingent nature of counsel's fee arrangement, the skill required in conducting the litigation and succeeding in the settlement. (Dkt. No. 47-1 at 20:22-25.) However, California law is clear that a multiplier or fee enhancement is not automatic. Indeed, "the 'results obtained factor' can [only] properly be used to enhance a lodestar calculation where an exceptional effort produced an exceptional benefit." Thayer, 92 Cal. App. 4th at 838

(finding that the results obtained factor did not support an enhancement because "[t]he defendant in this case never disputed plaintiffs' factual or legal claims and promptly capitulated after the mere filing of the complaints. It is questionable whether the protracted negotiations that delayed execution of the settlement agreement added substantial value to the settlement" id. at 838-39, and remanding for a reduction of the lodestar or application of a negative multiplier). So too here. The results obtained factor does not warrant an enhancement. If anything, the quality of the representation here would warrant a downward adjustment as in Thayer. While the Court does not wish to belabor its concerns with counsels' performance here (as they have already been outlined in prior orders), it feels that it must address them again given that the motion to alter judgment appears not to grasp the extent of counsels' deficient performance.

As the Court noted at the preliminary approval hearing, the preliminary approval motion and notice contained numerous issues which gave rise to "grave concerns" and which did not "give [the Court] any confidence that the settlement was well thought out." (Dkt. No. 30 at 5:24-6:2.) For example,

- although the settlement did not require class members to submit a claim form, in some places the proposed notice advised them that they had to submit a valid and timely claim while elsewhere stated that class members did not have to do anything to receive an award;
- the notice advised class members that if they had any questions they could inspect the court files at 450 Golden Gate, although the Court does not maintain any paper files and the class is spread across California;
- the notice did not comply with Federal Rule of Civil Procedure 23(h) and In re Mercury Interactive Corp. Sec. Litig., 618 F.3d 988, 993–94 (9th Cir. 2010) with respect to the request for attorneys' fees and costs; and
- the preliminary approval motion did not explain why the PAGA claim was added to the settlement or substantively explain which class members had class action waivers and how that affected the parties' settlement positions.

While counsel subsequently filed a new motion for preliminary approval, it too had issues and counsel was ordered to submit a second revised notice. (Dkt. No. 31.) For example, in the section of the notice advising class members how their estimated payment is determined, the notice gave an example which greatly inflated the estimated payment a class member was likely to receive,

erroneously suggesting that a class member could receive 5% of the net settlement amount (Dkt. No. 29-1 at 45). Upon receipt of the revised notice, the Court issued its preliminary approval order, which ordered the parties to provide the attached notice within 34 days (by October 30) and ordered counsel to file their motion for attorneys' fees and costs and incentive awards by October 25. (Dkt. No. 33.) The Court thereafter extended the notice date until November 16, 2018. (Dkt. No. 35.) On December 4, after counsel had failed to file their motion for attorneys' fees and costs and incentive awards, and the Court learned that counsel had not created the class website as ordered in the preliminary approval order, the Court issued an order requesting a status update. (Dkt. No. 36.) Class counsels' status report indicated that numerous issues had arisen with respect to the settlement—none of which had been brought to the Court's attention until the Court asked—and that notice had not been provided to the class despite the Court's Order. (Dkt. N. 37.) While Class Counsel thereafter appeared to diligently pursue resolution of these issues and notice was finally sent to the class, the process raised concerns regarding the depth of the parties' knowledge of facts underlying Plaintiffs' claims at the time the settlement was reached. For example, it did not appear that either Plaintiffs' counsel or Defendant's counsel were aware that Tesla had reclassified all its Owner Advisors, Sales Advisors, and other similar sales people (who make up the class) as non-exempt employees four months before the parties filed their preliminary approval motion. (Dkt. No. 37 at 3.) Finally, even with the instant motion to alter judgment, it is apparent that counsel does not grasp the deficiencies in their performance—blaming the Court for its confusion regarding the inconsistencies between the lodestar chart and the billing records and discounting the Court's concern regarding the future billing entries as "clearly typos." (Dkt. No. 3 at 24:26.)

Accordingly, Plaintiffs have failed to show that the Court committed a mistake of law or fact with respect to the lodestar calculation or that the Court committed a manifest injustice when it declined to award a multiplier.

Fourth, Plaintiffs insist that the Court erred in reducing the costs for taxi rides by fifty percent. Counsel had claimed $484.43 for taxi costs for travel between San Francisco Airport and the courthouse for Ms. David and Ms. Martin for the two preliminary approval hearings and the

status conference, which the Court reduced to $242.22. The Court found that the expenses were excessive and that counsel was not entitled to costs for traveling for the second preliminary approval hearing or the status conference (the Court reduced counsels' claimed expenses for airfare and hotels on this latter basis as well). Plaintiffs insists that the Court erred in doing so because Ms. Martin and Ms. David took different flights to the two preliminary approval hearings and thus were unable to share a taxi. Even if so, this only addresses part of the Court's concern with the taxi costs—that it overstated the cost of a taxi ride—and not that counsel was only entitled to expenses related to the first approval hearing. Accordingly, Plaintiffs have failed to demonstrate that the Court's reduction of Plaintiffs' claimed taxi costs was a mistake.

Fifth and finally, Plaintiffs raise three issues regarding the Court's reduction of the incentive awards for the three class representatives. Plaintiffs sought $10,000 for each class representative which the Court reduced to $5,000 as is standard in this district. See Harris v. Vector Marketing Corp., 2012 WL 381202, at *7 (N.D. Cal. 2012) ("Several courts in this District have indicated that incentive payments of $10,000 or $25,000 are quite high and/or that, as a general matter, $5,000 is a reasonable amount.") (citations omitted). The Court reduced the amount because an incentive award of $10,000 was disproportional to each class member's recovery, the class representatives did not play a particularly active role in the litigation as they did not attend the mediation and the case settled before there was any motion practice or discovery (such as depositions), Plaintiffs had not provided support for their claim that "numerous articles" appeared about class representatives which damaged their reputation, and the incentive payments were to be paid from the class fund such that any incentive payment reduced the class recovery. (Dkt. No. 56 at 25-27.)

Plaintiffs insist that the Court erred because: (1) it did not warn counsel at the final approval hearing that it was considering reducing the incentive awards, (2) it was legal error to conclude that an award of $10,000 was disproportionate to the individual class member recovery, and (3) the publicity regarding the case warranted a higher incentive award. As discussed supra, the Court was not required to have argument on this or any issue and Plaintiffs were on notice from the preliminary approval order that the Court had concerns regarding the size of the incentive

payment. With respect to Plaintiffs' other two arguments, Plaintiffs have failed to demonstrate legal or factual error in the Court's decision. Incentive awards "are discretionary, and are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." *Rodriguez v. W. Publ'g Corp*., 563 F.3d 948, 958–59 (9th Cir. 2009). Here, the case settled at very early stage and without any of the class representatives either attending the mediation, being deposed, or attending a single hearing. This alone is reason enough to decline to deviate from the standard incentive award of $5,000.

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In sum, Plaintiffs have failed to demonstrate exceptional circumstances sufficient to justify extraordinary relief. Engleson v. Burlington Northern Railroad Co., 972 F.2d 1038, 1044 (9th Cir. 1992).

CONCLUSION

For the reasons stated above, Plaintiffs' motion to alter judgment under Federal Rule of Civil Procedure 60(b)(1) and 60(b)(6) is DENIED.

This Order disposes of Docket No. 63.

IT IS SO ORDERED.

Dated: September 9, 2019

JACQUELINE SCOTT CORLEY
United States Magistrate Judge