

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. SACV 06-350 DOC (RNBx)

Date: October 28, 2010

Title: MIKE RUTTI v. LOJACK CORPORATION

PRESENT:

THE HONORABLE DAVID O. CARTER, JUDGE

Kathy Peterson
Courtroom Clerk

Not Present
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS: ATTORNEYS PRESENT FOR DEFENDANTS:

NONE PRESENT

NONE PRESENT

PROCEEDING (IN CHAMBERS): GRANTING PLAINTIFF'S MOTION TO TOLL STATUTE OF LIMITATIONS OF FLSA CLAIMS

Before the Court is a Motion to Toll Statute of Limitations filed by Plaintiff Mike Rutti ("Plaintiff") in the above-captioned case ("Motion") (Docket 160). The court finds this matter appropriate for decision without oral argument. Fed.R.Civ. P. 78; Local Rule 7-15. After considering the moving, opposing and replying papers thereon, and for the reasons stated below, the Court hereby GRANTS the Motion.

I. BACKGROUND

On April 5, 2006, Plaintiff filed a putative class action against Defendant LoJack Corporation ("Defendant") alleging violations of the Fair Labor Standards Act ("FLSA"). Plaintiff further filed a Motion to Facilitate Notice For Class Certification on January 16, 2007 ("Motion to Facilitate Notice") (Docket 19). However, the Court declined to rule on Plaintiff's Motion to Facilitate Notice until it had resolved the issues presented in Defendant's Motion for Partial Summary Judgment, which requested summary judgment on Plaintiff's FLSA claims.¹

¹Defendant appears to contend that notice was sent to absent class members anyway. In support of this statement, Defendant submits a letter as an exhibit to a declaration in support of its Opposition to the instant Motion. See Exh. A to Decl. of D.

In August 2007, the Court granted Defendant's Motion for Partial Summary Judgment (Docket 130). Plaintiff appealed the decision to the Ninth Circuit. The Ninth Circuit reversed and remanded on May 7, 2010, on the grounds that the Court had relied on an erroneous legal standard in reaching its summary judgment ruling. Plaintiff now brings the instant Motion, seeking to toll the statute of limitations under the FLSA as of March 12, 2007, the date of Plaintiff's initially scheduled hearing on the Motion to Facilitate Notice.

II. LEGAL STANDARD

In class actions governed by Federal Rule of Civil Procedure 23, the statute of limitations for all putative class members is automatically tolled from the date of the filing of the complaint until the date that the court denies class certification. This rule of automatic tolling, however, does not apply to class actions under the FLSA. Instead, the statute of limitations for putative FLSA class members continues to run until the putative class members file consent-to-join forms. *See* 29 U.S.C. § 256; *see also Partlow v. Jewish Orphans' Home of Southern Cal., Inc.*, 645 F.2d 757, 760 (9th Cir. 1981); *Grayson v. K-Mart Corp.*, 79 F.3d 1086, 1106 (11th Cir. 1996). The Ninth Circuit, however, has established that equitable tolling of the statute of limitations under the FLSA is appropriate in certain instances. *Partlow*, 645 F.2d at 760-61 (9th Cir.1981) *abrogated on other grounds by Hoffman-LaRoche Inc. v. Sperling*, 493 U.S. 165 (1989).

III. DISCUSSION

The parties present markedly different views on the appropriateness of equitable tolling in this case. Plaintiff emphasizes that the delay in issuing notice to potential class members is attributable solely to decisions of the Court. Plaintiff argues that faultless absent class members, who have yet to receive notice of their right to opt into the class, should not have their claims barred as a result of this court-imposed delay. Defendant, by contrast, points out that nothing prevented absent class members from filing individuals actions within the statutory period. Defendant contends that equitable tolling should not be invoked to protect putative class members who did not diligently pursue their rights.

Several courts within the Ninth Circuit have found equitable tolling appropriate in similar circumstances. *See, e.g. Misra v. Decision One Mortg. Co., LLC*, 673 F. Supp. 2d 987, 999 (C.D. Cal. 2008) (tolling statute of limitations on FLSA class action until stipulated notice was approved by court, on account of "delays ... no fault of Plaintiffs"); *Castle v. Wells Fargo Financial, Inc.*, 2007 WL

Chammas. In this letter, putative class members were asked to contact Plaintiff's counsel to discuss their experiences, in order to assist Plaintiff's counsel and the Court in "determin[ing] whether the case should proceed forward as a class action." *Id.* This purported letter from Plaintiff's counsel, designed to gather information, does not constitute an official notice of class action informing putative class members of their right to file consents to join the suit.

1105118 at *2 (N.D. Cal. 2007) (tolling the statute of limitations in an FLSA class action as a result of a court-issued stay, stating that “plaintiffs here are without fault, and equitably tolling the statute of limitations will preserve claims that will otherwise be lost as a result of the stay.”); *Lewis v. Countrywide Financial Corp.*, 2009 WL 1384975 at *3 (N.D. Cal. 2009) (same); *Lucas v. Bell Trans.*, 2010 WL 3895924 at *5 (D. Nev. 2010) (same); *Owens v. Bethlehem Mines Corp.*, 630 F.Supp. 309, 313 (W.D.Va.1986) (relying on *Partlow*, the Court found that equitable tolling was warranted because it had delayed ruling on the plaintiffs' certification motion for over a year). *Cf. Mowdy v. Beneto Bulk Transp.*, 2008 WL 901546 at *11-12 (N.D. Cal. 2008) (stating that “although *Partlow* is not interpreted with uniform scope ... equitable tolling is properly applied to cases involving faultless plaintiffs whether placed in peril by timely but defective filings of their own counsel or by defendants' inducement of delay in the proceedings.”).

Defendant contends that *Lewis v. Wells Fargo & Co.*, 669 F. Supp. 2d 1124, 1129 (N.D. Cal. 2009), *Prentice v. Fund for Public Interest Research, Inc.*, 2007 WL 2729187 at *9-10 (N.D. Cal. 2007) and *Gerlach v. Wells Fargo & Co.*, 2006 WL 824652, at *14-15 (N.D. Cal. 2006) stand for the opposite proposition. The Court, however, finds these cases distinguishable. *Lewis*, *Prentice* and *Gerlach* concern the propriety of tolling the statute of limitations between the date a complaint is filed and the deadline for receipt of consents to join. In none of these cases did the plaintiffs present sufficient justification for tolling. Congress has expressly determined that the statute of limitations for absent FLSA class members should not be tolled automatically between the filing of a complaint and the receipt of the class member's consent to join. *See* 29 U.S.C. § 256. In this case, by contrast, Plaintiff does not request tolling between the date of the filing of the complaint and the receipt of consents to join. Plaintiff requests tolling beginning on the initially scheduled hearing date on the Motion to Facilitate Notice, in order to ensure that absent class members are not prejudiced by court-imposed delays that resulted in the original Motion to Facilitate Notice not being heard.

The Court thus finds that the weight of authority militates in favor of granting Plaintiff's Motion and that the principles of equity are best served in this case by tolling the statute of limitations.

VI. DISPOSITION

In light of the above, the Court hereby GRANTS Plaintiff's Motion to Toll the Statute of Limitations For FLSA Claims. The statute of limitations on putative class members' FLSA claims will be tolled as of March 12, 2007.

The Clerk shall serve this minute order on all parties to the action.