



Babin et al v. Plaquemines Parish

2020 | Cited 0 times | E.D. Louisiana | December 11, 2020

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF LOUISIANA

KEITH BABIN, ET AL. CIVIL ACTION VERSUS NO. 18-7378-WBV-DMD PLAQUEMINES
PARISH SECTION: D (3)

ORDER AND REASONS Before the Court is Motion to Alter or Amend the Judgment or, in the Alternative, For a New Trial (Fed. R. Civ. P. 59). 1

Defendant opposes the Motion, 2 and Plaintiffs have filed a Reply.

3 memoranda and the applicable law, the Motion is GRANTED in part, as modified,

and DENIED in part, as moot I. FACTUAL AND PROCEDURAL BACKGROUND

This case arises out of a claim for overtime wages brought by present and On August 3, 2020, Keith Babin, Kevin Burge, Joshua Dismukes and

Barbara Tate Plaintiffs filed a Complaint in this Court against Defendant, asserting only one cause of action failure to pay overtime wages under the Fair Labor Standards Act , 29 U.S.C. § 201, et seq., pursuant to 29 U.S.C. § 207. 4

Plaintiffs are present and former paramedics or for Defendant, 5

who

1 R. Doc. 134. 2 R. Doc. 140. 3 R. Doc. 144 4 R. Doc. 1 at pp. 5-6. 5 Barbara Tate left her job with Defendant in the summer of 2019. See, R. Doc. 138 at pp. 52-53. allege that Defendant failed to pay them mandatory overtime compensation as required under the FLSA. 6

Plaintiffs assert that they each work seven-day shifts, followed by seven days off, and that during those shifts they are on-call 24 hours a day for a total of 168 hours. Plaintiffs allege that although they work 168 hours in a workweek, they were only paid for 132 hours a week. 7

Plaintiffs also assert that they were never paid any time-and-a-half overtime wages, as required by federal law.



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Defendant contends that Plaintiffs were paid for all hours actually worked, and denies that any of the individual plaintiffs worked more than 40 hours in a workweek during the relevant time period. 8

Defendant further asserts that it complied with Defendant claims that Plaintiffs were afforded six or more hours of sleep under an

express and/or implied agreement and were therefore paid 132 hours out of the 168 hours per pay period. Defendant states that Plaintiffs were paid those 132 hours per pay period regardless of whether Plaintiffs performed any actual work (i.e., responded to an emergency call), and further that Plaintiffs were completely relieved of their duties during their time waiting for an emergency call. 9

As such, Defendant asserts that Plaintiffs are not entitled to overtime wages under the FLSA.

The Court conducted a jury trial in this matter from October 28, 2019 to October 30, 2019. 10

The parties agreed to a verdict form with 16 questions, with the

6 R. Doc. 1 at pp. 5-6. 7 Id. at p. 1. 8 R. Doc. 66 at p. 4. 9 Id. 10 R. Docs. 124, 125 & 127. same four questions posed as to each individual plaintiff. 11

The Jury Interrogatories were:

INTERROGATORY NO. 1

Did [Plaintiff] prove, by a preponderance of the evidence, that his overtime pay?

Yes _____ No _____ If you answered NO to Interrogatory No. 1, your deliberations with respect to [Plaintiff] are finished. Please proceed with your deliberations for the next plaintiff. If you answered YES to Interrogatory No. 1, please proceed to Interrogatory No. 2. INTERROGATORY NO. 2

Has [Plaintiff] proved that Defendant failed to pay her the overtime pay required by law?

Yes _____ No _____ If you answered NO to Interrogatory No. 2, your deliberations with respect to [Plaintiff] are finished. Please proceed with your deliberations for the next plaintiff.

If you answered YES to Interrogatory No. 2, please proceed to Interrogatory No. 3.

INTERROGATORY NO. 3

Did the Parish prove, by a preponderance of the evidence, that the six-hour down time does not qualify as hours worked?



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Yes _____ No _____ Please proceed to Interrogatory No. 4. INTERROGATORY NO. 4

Did [Plaintiff] prove, by a preponderance of the evidence, that the Parish knew that its conduct was prohibited by the FLSA, or showed reckless disregard to whether its conduct violated the FLSA?

Yes _____ No _____

11 R. Docs. 129, 129-1, 129-2 & 129-3.

You have completed your deliberations with respect to [Plaintiff]. Please proceed with your deliberations for the next Plaintiff. 12 After deliberating for approximately six hours, the Court was informed that a verdict had not been reached and that the jury remained deadlocked. 13

The Court discussed the matter with counsel, who voiced no objection to the Court issuing the Civil Allen Charge from the Fifth Circuit Pattern Jury Instructions (Civil Cases) Section 2.18. 14

Thus, without objection from either party, the Court read its Allen Charge and the jury continued its deliberations. 15

Approximately 35 minutes later, the jury returned with a verdict. T in response to Jury Interrogatory No. 1 as to each plaintiff, and in response to Jury Interrogatory No. 2 as to each plaintiff. Thus, the jury found that Plaintiffs had proved, by a preponderance of the evidence, that standby time plaintiff is entitled to overtime pay. However, the jury

Plaintiffs failed to prove that Defendant had failed to pay them overtime wages as required by law. On November 5, 2019, the Court entered a Judgment in favor of Defendant and against Plaintiffs. 16

Plaintiffs filed the instant Motion asking the Court to issue an order altering or amending the judgment pursuant to Federal Rule of Civil Procedure 59(e) because

12 Id. 13 See, R. Doc. 127; R. Doc. 139 at p. 93. 14 R. Doc. 139 at pp. 93-96. 15 Id. at pp. 96-98. 16 R. Doc. 133. that Plaintiffs were paid overtime wages is contrary to the evidence and, therefore, constitutes a manifest error of law or fact. 17

Plaintiffs assert that judgment should be entered in their favor, with the issue of damages referred to a special master under Fed. R. Civ. P. 53. Plaintiffs contend that the primary question in this case is whether the time Plaintiffs spend on call, but not actively responding to an emergency,

18 Plaintiffs claim that, if the answer is yes, then Plaintiffs worked more than 40 hours per week and overtime is owed. Plaintiffs assert that if the answer is no, then Plaintiffs did not work over 40 hours a week and no overtime wages are owed. 19



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which asked whether each plaintiff standby time is spent predominantly for [the] 20

Plaintiffs assert that there is only one set of facts that in this case qualified as hours worked, which required the payment of overtime pay under federal law; and (2) the jury found Defendant actually paid the full amount of overtime wages that were due. 21

Plaintiffs contend that there are no facts or evidence in the record to support this finding, as the uncontested facts clearly shows that Plaintiffs were never paid overtime wages. 22

17 R. Doc. 134. 18 R. Doc. 134-1 at p. 5. 19 Id. 20 Id. 21 Id. at p. 2. 22 Id.

Instead, Plaintiffs argue the testimony and exhibits clearly show that Plaintiffs are and were paid for 18 hours a day of straight time at their regular pay rate, and that Defendant has never paid paramedics a time-and-a-half overtime premium for standby or on-call time. 23

Plaintiffs point out that the Joint Pretrial iffs did not receive any 24

Plaintiffs assert that, -payment of overtime is a simple fact,

25 In light of the clear and uncontested evidence that no overtime wages were paid, Plaintiffs contend that the jury committed manifest error in finding otherwise in its answer to Interrogatory No. 2 and that the Court should enter an amended judgment 26

Alternatively, Plaintiffs request a new trial limited to the question of whether Plaintiffs have proven that Defendant failed to pay them overtime premiums. 27

all of the evidence in the record, as there were no exhibits or testimony from which a reasonable jury could possibly have found that overtime was paid. 28

Defendant opposes the Motion, asserting that it should be denied because Plaintiffs seek to amend the ovember 5, 2019 Judgment based upon an inconsistent verdict, and Rule 59(e) does not provide Plaintiffs with a remedy for an

23 Id. 24 Id. (quoting R. Doc. 66 at p. 5) (internal quotation marks omitted). 25 Id. 26 R. Doc. 134-1 at p. 2. 27 R. Doc. 134 & R. Doc. 134-1 at p. 11. 28 R. Doc. 134-1 at p. 11. allegedly inconsistent jury verdict. 29

Defendant points out that, when given the opportunity, Plaintiffs did not object to the wording of the jury , nor did they object to the verdict before the jury was dismissed. 30

credibility and factual findings are not illogical or inconsistent. Defendant posits that



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the jury simply found that while Plaintiffs proved the standby time was for the benefit of the employer, and Plaintiffs failed to prove that Defendant failed to pay any overtime that may be due. 31

Defendant asserts that such a finding is not a manifest error of law or fact that entitles Plaintiff to an amended judgment under Rule 59(e), but cites no evidence to support the verdict. 32

59(a) should be denied because Plaintiffs seek a new trial based upon an inconsistent

jury verdict, which is more appropriately analyzed under Fed. R. Civ. P. 49.

33 Defendant first argues that Plaintiffs waived their objection to the allegedly inconsistent verdict by not objecting to the general verdict before the jury was dismissed. 34

-argument that their objection was not waived because the verdict was a special verdict, Defendant asserts that the jury verdict in this case was a general verdict because the jury found in favor of Defendant

29 R. Doc. 140 at p. 5 (citing Team Contractors, LLC v. Waypoint NOLA, LLC, Civ. A. No. 16-1131, 2018 WL 4252553, at *2-3 (E.D. La. Sept. 6, 2018), reconsid. denied, 2018 WL 4815978 (E.D. La. Oct. 4, 30 R. Doc. 140 at p. 5. 31 Id. 32 Id. (citing Schiller v. Physicians Resource Group Inc., 342 F.3d 563, 567 (5th Cir. 2003) (quoting Rosenzweig v. Azurix Corp., 332 F.3d 854, 863-64 (5th Cir. 2003))). 33 R. Doc. 140 at p. 6. 34 Id. (citing Montano v. Orange County, 842 F.3d 865, 881-82 (5th Cir. 2016)). and the jury was clearly instructed on the law by the Court. 35

Defendant points out that a special verdict requires the jury to find facts without reference to the success of either litigant, while a general verdict requires a finding directly in general terms for one party or the other. 36

Defendant also asserts that with a special verdict, the jury needs no instruction on the law because the court applies the law to the facts as found by the jury. 37

Defendant contends that, since the jury was instructed on the law, the verdict was a general one. 38

Thus, Defendant maintains that because Plaintiffs did request for a new trial must be denied.

If the Court finds that the verdict was a special verdict, Defendant asserts the Motion must still be denied because the verdict is consistent and, therefore, reconcilable. 39

Defendant argues that the plain wording of the jury interrogatories the jury addressed two different issues: (1) whether the standby time quali (2) whether Plaintiffs proved by a preponderance of the evidence that they did not



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receive overtime pay. 40

Defendant argues that, given the stipulation that no plaintiff was dispatched for more than 40 hours during any workweek in the last three years, 35

R. Doc. 140 at p. 7. 36 Id. (quoting *Giddy Up, LLC v. Prism Graphics, Inc.*, Civ. A. No. 3:06-cv-0948-B, 2008 WL 656504, at *3 (N.D. Tex. Mar. 12, 2008)) (internal quotation marks omitted). 37 R. Doc. 140 at p. 7 (quoting *Giddy Up, LLC*, Civ. A. No. 3:06-cv-0948-B, 2008 WL 656504 at *3) (internal quotation marks omitted). 38 R. Doc. 140 at p. 7. 39 R. Doc. 140 at pp. 7-8. 40 R. Doc. 140 at p. 8 (citing R. Doc. 66 at p. 5). 41

Defendant notes that the Court already reconciled the verdict when it rendered judgment for Defendant and aptly stated at the close of trial,

they could have found that the [sic] Plaquemines Parish did not fail to pay the 42

Nonetheless, if the Court orders a new trial, Defendant asserts a new trial must be held on all the issues, not just the issues related to the second jury interrogatory. 43

Defendant argues that the issues of liability are so interwoven that it would be inherently unjust to order a new trial of only the latter issue, as Plaintiffs request. 44

Defendant claims 45

In response squarely address the arguments set forth in their Rule 59 Motion, and seeks to recast

the Motion as one brought under Fed. R. Civ. P. 49, which is a completely different motion arising under a different legal standard. 46

Plaintiffs emphasize that the issue whether the jury committed a manifest error of law or fact or completely disregarded

the credible evidence in the record in finding 41

R. Doc. 140 at p. 8 (citing R. Doc. 139 at p. 418:21-419:1). 42 R. Doc. 140 at pp. 8-9 (quoting R. Doc. 139 at p. 517:7-14) (internal quotation marks omitted). 43 R. Doc. 140 at p. 9. 44 Id. (citations omitted). 45 Id. (citing *Hatfield v. Seaboard Air Line Railroad Co.*, 396 F.2d 721 (5th Cir. 1968)). 46 R. Doc. 144. overtime wages. Plaintiffs assert that Defendant points to no evidence or testimony at Defendant actually paid overtime wages, which is because no such evidence exists. 47

arguments regarding Rule 49(b) miss the point and reflect a fundamental



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misunderstanding of the type of verdict entered in this case and the relief sought by Plaintiffs. Plaintiffs contend that Rule 49(b) is inapplicable because the jury entered a special verdict. 48

Plaintiffs assert that the jury unquestionably entered a special verdict because the verdict form asked the jury to answer a series of questions of fact, 49

As such, Plaintiffs assert they have not waived the right to seek relief under Rule 59.

Plaintiffs inconsistent s as hours worked,

but that no overtime wages were owed. 50

Plaintiffs explain that the only problem evidence in the record. 51

Plaintiffs maintain that the proper remedy for manifest error by the jury is to alter or amend the November 5, 2019 Judgment under Rule 59(e). 52

Plaintiffs emphasize that the non-payment of overtime wages was confirmed es testimony and written exhibits, and acknowledged as undisputed in the Pretrial Order, and that Defendant failed to point

47 Id. at p. 1. 48 Id. at pp. 2-3. 49 Id. at p. 3. 50 Id. at p. 4. 51 Id. 52 R. Doc. 155 at p. 5. to or cite any contrary evidence in its Opposition brief. 53

Plaintiffs maintain their alternative argument that, if the Court does not alter or amend the Judgment, it should order a new trial limited to the issues raised by the second jury interrogatory. 54
II. LEGAL STANDARD

A. . substandard wages and oppressive 55

minimum-wage, maximum-hour, and overtime guarantees that cannot be modified

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one-and-a-half times their normal wages for hours worked in excess of forty per

57 cause of action on their own behalf and on behalf of other employees similarly

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tion for employees to recover unpaid overtime compensation under the statute from their employers,



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plus 59

53 Id. 54 Id. at p. 6. 55 Meza v. Intelligent Mexican Marketing, Inc., 720 F.3d 577, 581 (5th Cir. 2013) (quoting Barrentine v. Ark.-Best Freight Sys., Inc., 450 U.S. 728, 739, 101 S.Ct. 1437, 67 L.Ed.2d 641 (1981)) (internal quotation marks omitted); See also, 29 U.S.C. § 202(a). 56 Genesis Healthcare Corp. v. Symczyk, 569 U.S. 66, 69, 133 S.Ct. 1523, 1527, 185 L.Ed.2d 636 (2013). 57 Meza, 720 F.3d at 581 (citing 29 U.S.C. § 207(a)). 58 Pineda v. JTCH Apartments, LLC, Civ. A. No. 3:13-CV-0588-B, 2015 WL 5052241, at *3 (N.D. Tex. Aug. 26, 2015) (quoting Genesis, 569 U.S. at 69, 133 S.Ct. at 1527) (internal quotation marks omitted). 59 American Federation of State, County and Mun. Employees v. La. ex rel. Dept. of Health & Hosps., Civ. A. No. 90-4389, 2001 WL 29999, at *10 (E.D. La. Jan. 9, 2001) (citing 29 U.S.C. § 216(b)); Pineda, Civ. A. No. 3:13-CV-0588-B, 2015 WL 5052241 at *3 (quoting 29 U.S.C. § 216(b)). proving that he performed work for which he was not compensated in accordance with

60 B. Motion to Alter or Amend Judgment Under Fed. R. Civ. P. 59(e). Ru 61

To prevail on a Rule 59(e) motion, the movant must establish one of the following: (1) a manifest error in law or fact; (2) the availability of new evidence not previously available; or (3) an intervening change in the controlling law. 62

Here, No. 2 constitutes a man 63

The Fifth Circuit depart

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for rehashing evidence, legal theories, or arguments that could have been offered or 65

While courts have considerable discretion in

60 American Federation, Civ. A. No. 90-4389, 2001 WL 29999 at *10. 61 Templet v. HydroChem Inc., 367 F.3d 473, 478 (5th Cir. 2004) (quoting In re Transtexas Gas Corp., 303 F.3d 571, 581 (5th Cir. 2002)). 62 Schiller v. Physicians Res. Grp. Inc., 342 F.3d 563, 567-68 (5th Cir. 2003) (quoting Rosenzweig v. Azurix Corp., 332 F.3d 854, 864 (5th Cir. 2003)) (internal quotation marks omitted); See also, In re Benjamin Moore & Co., 318 F.3d 626, 629 (5th Cir. 2002). 63 Team Contractors, LLC v. Waypoint NOLA, LLC, Civ. A. No. 16-1131, at *3 (E.D. La. Sept. 6, 2018) (citing , Civ. A. No. 08-0664, 2009 WL 2046766, at *4 (E.D. La. July 14, 2009)). 64 Berezowsky v. Rendon Ojeda, 652 Fed.Appx. 249, 251 (5th Cir. 2016) (quoting Guy v. Crown Equip. Corp., 394 F.3d 320, 325 (5th Cir. 2004)) (internal quotation marks omitted). 65 Templet, 367 F.3d at 479 (citing Simon v. United States, 891 F.2d 1154, 1159 (5th Cir. 1990)). addressing a motion for reconsideration, 66

the Fifth Circuit has cautioned that, be used sparingly. 67



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The Fifth Circuit has identified two important judicial imperatives regarding motions for reconsideration: (1) the need to bring litigation to an end; and (2) the need to render just decisions on the basis of all the facts. 68

C. Motion for New Trial Under Fed. R. Civ. P. 59(a). issues . . . after a jury trial, for any reason for which a new trial has heretofore been

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Although Rule 59 does not specify or limit the grounds necessary for granting a new trial, the Fifth Circuit has instructed the weight of evidence, the damages awarded are excessive, the trial was unfair, or

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light most favorable to a finding of consistency, reconciliation is impossible

71 The decision to grant or deny a motion for a new trial rests within the sound discretion of

66 Templet, 367 F.3d at 479. 67 Templet, 367 F.3d at 479 (citing *Clancy v. Employers Health Ins. Co.*, 101 F. Supp. 2d 463, 465 (E.D.La. 2000)). 68 Templet, 367 F.3d at 479 (citing *Lavespere v. Niagara Machine & Tool Works, Inc.*, 910 F.2d 167, 174 (5th Cir. 1990), overruled on other grounds, *Little v. Liquid Air Corp.*, 37 F.3d 1069 (5th Cir. 1994)). 69 Fed. R. Civ. P. 59(a)(1)(A). 70 *Seidman v. American Airlines, Inc.*, 923 F.2d 1134, 1140 (5th Cir. 1991) (quoting *Smith v. Transworld Drilling Co.*, 773 F.2d 610, 613 (5th Cir. 1985)). 71 *Vargas v. Manson Gulf, LLC*, 439 F. Supp. 3d 809, 813 (E.D. La. 2020) (citing *Inc.*, 258 F.3d 326, 343 (5th Cir. 2001); *Willard v. The John Hayward*, 577 F.2d 1009, 1011 (5th Cir. 1978)). the district court, but that discretion is tempered by the deference due to a jury. 72

73 The Fifth Circuit has held that this discretion is even broader when the district court denies, rather than grants, a motion for new trial. 74

not merely the greater weight

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76 would support a different conclusion by the jury cannot serve as the grounds for granting a new trial. 77

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The Fifth Circuit has further explained that, 79

When determining whether a jury verdict is against the 72

Foradori v. Harris, 523 F.3d 477, 504 (5th Cir. 2008); Scott v. Monsanto Co., 868 F.2d 786, 789 (5th Cir. 1989). 73 Seidman, 923 F.2d at 1140 (quoting Cobb v. Rowan Companies, 919 F.2d 1089, 1090 (5th Cir. 1991)). 74 See, Cates v. Creamer, 431 F.3d 456, 460 (5th Cir. 2005) (citing Scott, 868 F.2d at 789). 75 Scott, 868 F.2d at 789 (quoting Conway v. Chemical Leaman Tank Lines, Inc., 610 F.2d 360, 363 (5th Cir. 1980)). 76 Seibert v. Jackson County, Mississippi, 851 F.3d 430, 439 (5th Cir. 2017) (quoting Whitehead v. Food Max of Miss., Inc., 163 F.3d 265, 269 (5th Cir. 1998)). 77 Islander East Rental Program v. Barfield, Civ. A. No. 96-41275, 145 F.3d 359 (5th Cir. 1998) (citing Dawson v. Wal-Mart Stores, Inc., 978 F.2d 205, 208 (5th Cir. 1992)). 78 Shows v. Jamison Bedding, Inc., 671 F.2d 927, 930 (5th Cir. 1982) (quoting United States ex rel. Weyerhaeuser v. Bucon Construction Co., 430 F.2d 420, 423 (5th Cir. 1970)). 79 Peterson v. Wilson, 141 F.3d 573, 577 (5th Cir. 1998) (quotation and internal quotation marks omitted). weighs all the evidence, but need not view it in the light most favorable to the 80

the trial judge is not satisfied with the verdict of a jury, he has the right and indeed

the duty 81 III. ANALYSIS

A. The Motion for New Trial Under Fed. R. Civ. P. 59(a). Addressing their alternative request for a new trial, Plaintiffs assert that the jury verdict is against the great weight of the evidence and that a new trial is warranted under Fed. R. Civ. P. 59(a) limited to the question of whether Plaintiffs have proven that Defendant failed to pay them overtime. 82

Defendant mistakenly construes verdict, and asserts that Plaintiffs waived their objection to the inconsistency by not

raising it before the jury was dismissed because this case involved a general jury verdict. 83

Defendant maintains that the jury verdict is consistent and reconcilable plaintiff was dispatched for more than 40 hours during any workweek in the last three years. 84

Defendant further asserts that a new trial should only be granted on all of the issues because the issues of 80

Team Contractors, LLC v. Waypoint NOLA, LLC, Civ. A. No. 16-1131, 2019 WL 3532021, at *6 (E.D. La. Aug. 2, 2019) (quoting Smith v. Transworld Drilling Co., 773 F.2d 610, 613 (5th Cir. 1985)) (internal quotation marks omitted). 81 Smith, 773 F.2d at 613 (quoting C. Wright, Federal Courts 663 (4th ed. 1983)). 82 R. Doc. 134; R. Doc. 134-1 at pp. 2 & 11. 83 R. Doc. 140 at pp. 6-7 (citations omitted). 84 Id. at



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p. 8 (citing R. Doc. 139 at pp. 4-5). new trial 85

Defendant also claims result of a compromise to 86

case based upon an inconsistent jury verdict. 87

In fact, both parties agree that the jury verdict is not inconsistent. 88

Plaintiffs seek a new trial on the basis that the jury verdict is against the great weight of the evidence and, even further, is against all of the evidence presented in this case. 89

The Court, therefore, misguided argument that the request for a new trial should be denied because the

jury verdict is not inconsistent. Additionally, because the Opposition brief fails to address riate under Fed. R. Civ. P. 59(a) and addresses only whether a new trial is warranted under Fed. R. Civ. P. 49, the Court egarding whether Plaintiffs are entitled to a new trial is limited to the and evidence in the record. plaintiff had 90

Thus, the jury found that onstitutes hours worked and that Plaintiffs are entitled to

85 R. Doc. 140 at p. 9 (citations omitted). 86 Id. 87 R. Doc. 140 at pp. 4-6. 88 See, R. Doc. 140 at pp. 5, 7-9; R. Doc. 144 at p. 4. 89 R. Doc. 134-1 at p. 11. 90 R. Docs. 129, 129-1, 129-2 and 129-3. overtime pay based upon those hours. In Jury Interrogatory No. 2, the jury was asked 91

By that, while Plaintiffs had shown that they were entitled to overtime pay, Plaintiffs

failed to prove that Defendant violated the FLSA by failing to pay them overtime wages. After reviewing the evidence adduced at trial, as well as the uncontested facts contained in the Pretrial Order, 92

the Court finds that the jury verdict is against the great weight of the evidence in this case.

Plaintiffs correctly point out that in the Pretrial Order, the parties agreed that

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Additionally, each individual plaintiff testified at trial that he or she was never paid overtime wages by Defendant, 94

and their employment records show that each plaintiff was paid at their regular rate for any hours



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worked over 40 in a week. 95

In an effort to make an appropriate determination regarding the verdict is against the great weight of the evidence, the Court has reviewed and

considered all of the evidence introduced during the trial. The Court recognizes that Superintendent of the Fire Department who oversees all operations of the EMS personnel department at

91 R. Docs. 129, 129-1, 129-2 and 129-3. 92 R. Doc. 66. 93 R. Doc. 66 at p. 5. 94 See, Trial Transcripts, R. Doc. 137 at pp. 148, 180-181, 206; R. Doc. 138 at pp. 27-28, 78-79. 95 Trial Exhibits 5, 6, 7, 8. Plaquemines Parish, and Gina Meyer, Superintendent of Emergency Medical Services and the Ambulance Department in Plaquemines Parish before her retirement in 2016, testified that Plaintiffs were entitled to overtime wages only if emergency call, exceeded 40 hours in a workweek. 96

Butcher, Meyer and a third defense witness, Emily Sylve, a billing clerk for Plaquemines Parish, also testified that none of the plaintiffs ever reported being called more than 40 hours in a workweek on emergency call. 97

The only other testimony introduced by the defense was that of Patrick Harvey, the Director of Homeland Security Emergency Preparedness and 911 for Plaquemines Parish, who testified regarding the foundation of the dispatch logs submitted as exhibits by Defendant. 98

The parties also stipulated at trial that no plaintiff was dispatched for more than 40 hours during any workweek in the last three years of employment. 99

Defendant relies upon this stipulation in arguing that the jury verdict is not inconsistent.

The foregoing evidence, however, bears only on the factual issues raised in Jury Interrogatory No. 1 whether Plaintiffs proved that their standby time constitutes

The jury had to find that Plaintiffs worked more than 40 hours in a workweek in order to find that they are entitled to overtime wages. Thus, neither the testimony of defense witnesses, Butcher, Meyer, and Sylve, nor the stipulation regarding how

96 See, Trial Transcript, R. Doc. 138 at pp. 117, 122-123, 151-152, 189. 97 Id. at pp. 122-123, 160. 98 Trial Transcript, R. Doc. 138 at pp. 102- 116. 99 Trial Transcript, R. Doc. 139 at pp. 4-5. many hours Plaintiffs were d respect to Jury Interrogatory No. 2.

Defendant has failed to direct the Court to any other evidence that supports

none. Accordingly, the Court finds that the jury verdict is against the great weight of the evidence.



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is denied to the extent that Plaintiffs seek a new trial only on whether Plaintiffs proved that Defendant failed to pay them overtime wages. According to the Fifth Circuit, t is tainted by error or prejudice, a new trial must nevertheless be granted on all issues

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Such is the case here. Accordingly, and exercising the discretion provided in Fed. R. Civ. P. 59(a), the Court finds that a new trial is warranted on all of the issues in this case.

B. The Motion to Alter or Amend Judgment Under Fed. R. Civ. P. 59(e). Because the Court has determined that a new trial is warranted in this matter, 2019 Judgment in this case. T 100

Eximco, Inc. v. Trane Co., 748 F.2d 287, 290 (5th Cir. 1984) (quoting Gasoline Products v. Champlin Refining Co., 283 U.S. 494, 500, 51 S.Ct. 513, 515, 75 L.Ed. 1188 (1931)). 101

Another section of this Court has also whether to grant or deny a motion to alter 102

Accordingly, the Motion is denied as moot to the extent that Plaintiffs seek to alter

Based on the foregoing, the Court finds that Plaintiffs have met their burden of proving that the jury verdict is against the great weight of the evidence in this case, and that a new trial is warranted. However, the Court finds that there must be a new trial on all issues, not just the issue raised by Jury Interrogatory No. 2. IV. CONCLUSION For the foregoing reasons, IT IS ORDERED that Motion to Alter or Amend the Judgment or, in the Alternative, For a New Trial (Fed. R. Civ. P. 59) 103

is GRANTED in part, as modified, and DENIED in part, as moot. The Motion is GRANTED as modified to the extent that Plaintiffs seek a new trial. The jury verdict is hereby set aside, and a new trial is ordered as to all issues. The Motion is

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Templet v. HydroChem Inc., 367 F.3d 473, 479 (5th Cir. 2004) (citing Clancy v. Employers Health Ins. Co., 1010 F. Supp. 2d 463, 465 (E.D. La. 2000)). 102

Action Ink, Inc. v. New York Jets, LLC, Civ. A. No. 12-46, 2013 WL 5532781, at *1 (E.D. La. Oct. 4, 2013) (Milazzo, J.) (quoting Hale v. Townley, 45 F.3d 914, 921 (5th Cir. 1995)); See, S. Constructors Grp., Inc. v. Dynalectric Co., 2 F.3d 606, 611 (5th Cir. 1993). 103

R. Doc. 134. DENIED as moot to the extent that Plaintiffs November 5, 2019 Judgment.

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----- WENDY B. VITTER United States District Judge

