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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

IN RE TACO BELL WAGE AND HOUR
ACTIONS,

) Master Case Number:
) 1:07-cv-1314 OWW GSA
)
) AMENDED SCHEDULING
) CONFERENCE ORDER
)
) Discovery Cut-Off re
) Whether Yum! Brands, Inc.
) is a Proper Party
) Defendant: 10/26/09
)
) Dispositive Motion Filing
) Deadline re Whether Yum!
) Brands, Inc. is a Proper
) Party Defendant: 11/30/09
)
) Class Certification
) Discovery Cut-Off: 6/24/10
)
) Motions re Class
) Certification Filing
) Deadline: 8/26/10
)
) Opposition re Class
) Certification Filing
) Deadline: 10/26/10
)
) Replies re Class
) Certification Filing
) Deadline: 12/6/10
)
) Hearing re Class
) Certification: 1/10/11
) 11:00 Ctrm. 3

I. Date of Scheduling Conference.

1 June 25, 2009.

2 II. Appearances Of Counsel.

3 Interim Lead Counsel Monica Balderrama, Esq., appeared on
4 behalf of all Plaintiffs.

5 Kenneth H. Yoon, Esq., Linda P. Whitehead, Esq., and Larry
6 W. Lee, Esq., appeared as Liaison Counsel on behalf of Plaintiff
7 Loraine Naranjo.

8 Timothy J. Donahue, Esq., appeared as Liaison Counsel on
9 behalf of Plaintiff Miriam Leyva.

10 Irell & Manella LLP by Andra B. Greene, Esq., and Julie M.
11 Davis, Esq., appeared on behalf of Defendants Taco Bell Corp.,
12 Taco Bell of America, Inc., and Yum! Brands, Inc.

13 Littler Mendelson by Spencer H. Hipp, Esq., appeared on
14 behalf of Defendants Taco Bell Corp., Taco Bell of America, Inc.,
15 and Yum! Brands, Inc.

16 III. Cooperation Between Interim Lead Counsel and Liaison
17 Counsel.

18 1. Interim Lead Counsel and Liaison Counsel for Naranjo
19 are directed to meet and confer to reach resolution on issues of
20 their cooperation and administration and handling of their
21 respective responsibilities in this litigation. In the event
22 counsel are unable to agree on the terms and conditions of their
23 respective roles on or before August 10, 2009, Liaison Counsel
24 for Naranjo may file any motion concerning cooperation and
25 administrative issues between Interim Lead Counsel and Liaison
26 Counsel.

27 IV. Summary of Pleadings.

28 Plaintiffs' Statement

1 1. On May 19, 2009, the Court granted Defendants' motions
2 for consolidation of the Medlock, Hardiman, Leyva, and Naranjo
3 Actions for all purposes through trial and, on June 9, 2009,
4 issued a Pretrial Order Regarding Consolidation of Pending
5 Actions and Appointment of Initiative Legal Group LLP as Interim
6 Lead Counsel ("Pretrial Order"), which directed Plaintiffs to
7 file a Consolidated Complaint on or before June 30, 2009.

8 2. Plaintiffs will be filing a Consolidated Complaint,
9 which alleges the following claims against Taco Bell Corp. and/or
10 Taco Bell of America, Inc. on behalf of a putative class of non-
11 exempt or hourly-paid employees:

12 a. That non-exempt or hourly-paid employees of Taco
13 Bell Corp. and/or Taco Bell of America, Inc. in the State of
14 California from September 7, 2003, until the resolution of this
15 lawsuit were not paid proper wages.

16 b. That non-exempt or hourly-paid employees of Taco
17 Bell Corp. and/or Taco Bell of America, Inc. in the State of
18 California from September 7, 2003 until the resolution of this
19 lawsuit were not paid proper overtime wages.

20 c. That non-exempt or hourly-paid employees of Taco
21 Bell Corp. and/or Taco Bell of America, Inc. in the State of
22 California from September 7, 2003 until the resolution of this
23 lawsuit were not paid proper minimum wages.

24 d. That non-exempt or hourly-paid employees of Taco
25 Bell Corp. and/or Taco Bell of America, Inc. in the State of
26 California from September 7, 2003 until the resolution of this
27 lawsuit missed meal periods and were not paid proper wages in
28 lieu thereof.

1 e. That non-exempt or hourly-paid employees of Taco
2 Bell Corp. and/or Taco Bell of America, Inc. in the State of
3 California from September 7, 2003 until the resolution of this
4 lawsuit missed rest periods and were not paid proper wages in
5 lieu thereof.

6 f. That non-exempt or hourly-paid employees of Taco
7 Bell Corp. and/or Taco Bell of America, Inc. in the State of
8 California were provided inaccurate wage statements from
9 September 7, 2006 until the resolution of this lawsuit.

10 g. That non-exempt or hourly-paid employees of Taco
11 Bell Corp. and/or Taco Bell of America, Inc. in the State of
12 California incurred business-related expenses and costs that were
13 not reimbursed from September 7, 2003 until the resolution of
14 this lawsuit.

15 h. That exempt or hourly-paid employees of Taco Bell
16 Corp. and/or Taco Bell of America, Inc. in the State of
17 California were not paid all vested accrued vacation wages
18 (including, but not limited to, vacation pay, personal day pay,
19 personal holiday pay, and/or floating holiday pay) at the end of
20 their employment from November 5, 2004 until the resolution of
21 this lawsuit.

22 i. That non-exempt or hourly-paid employees of Taco
23 Bell Corp. and/or Taco Bell of America, Inc. in the State of
24 California were not timely tendered their wages upon termination
25 of employment from September 7, 2004 until the resolution of this
26 lawsuit.

27 j. That Defendants have refused to secure the payment
28 of workers compensation benefits to Plaintiff Leyva. Instead,

1 Defendants deliberately, intentionally, and wrongfully fired
2 Plaintiff Levya without just cause, ending her employment on July
3 26, 2007.

4 3. On behalf of the putative class members, Plaintiffs
5 seek to recover unpaid compensation and unlawfully withheld
6 wages, including the interest thereon, as well as damages, and
7 statutory penalties for the applicable limitations period.
8 Plaintiffs further seek attorneys' fees and costs.

9 4. Additionally, Plaintiff Hardiman seeks penalties under
10 the California Private Attorneys General Act of 2004, California
11 Labor Code §§ 2699, et seq. ("PAGA"), for the applicable
12 limitations period for violations of California Labor Code
13 §§ 201, 202, 203, 204, 221, 226(a), 226.7, 510, 512, 1198, 2800
14 and 2802.

15 Plaintiffs' Statement If the Threshold Issue of Yum! Brands,
16 Inc.'s Liability is Met.

17 5. Plaintiffs' Consolidated Complaint will also allege
18 claims against Yum! Brands, Inc. on behalf of a putative class of
19 non-exempt or hourly-paid employees. Defendants are expected to
20 file a motion on the threshold issue of whether Yum! Brands, Inc.
21 is a proper named defendant in the consolidated actions. If
22 Plaintiffs prevail on the issue of Yum! Brands, Inc.'s liability,
23 the following additional claims will be at issue:

24 k. That non-exempt or hourly paid employees of Yum!
25 Brands, Inc. in the State of California from November 5, 2004
26 until the resolution of this lawsuit were not paid proper minimum
27 wages.

28 1. That non-exempt or hourly-paid employees of Yum!

1 Brands, Inc. in the State of California from November 5, 2004
2 until the resolution of this lawsuit were not paid proper
3 overtime wages.

4 m. That non-exempt or hourly-paid employees of Yum!
5 Brands, Inc. in the State of California were provided inaccurate
6 wage statements from November 5, 2007 until the resolution of
7 this lawsuit.

8 n. That non-exempt or hourly-paid employees of Yum!
9 Brands, Inc. in the State of California incurred business-related
10 expenses and costs that were not reimbursed from November 5, 2004
11 until the resolution of this lawsuit.

12 o. That exempt or hourly-paid employees of Taco Bell
13 Corp., Taco Bell of America, Inc., and/or Yum! Brands, Inc. in
14 the State of California were not paid all vested accrued vacation
15 wages (including, but not limited to, vacation pay, personal day
16 pay, personal holiday pay, and/or floating holiday pay) at the
17 end of their employment from November 5, 2004 until the
18 resolution of this lawsuit.

19 p. That non-exempt or hourly-paid employees of Yum!
20 Brands, Inc. in the State of California were not timely tendered
21 their wages upon termination of employment from November 5, 2005
22 until the resolution of this lawsuit.

23 6. On behalf of the putative class members, Plaintiffs
24 seek to recover unpaid compensation and unlawfully withheld
25 wages, including the interest thereon, as well as damages, and
26 statutory penalties for the applicable limitations period.
27 Plaintiffs further seek attorneys' fees and costs.

28 Defendants' Statement

1 1. Defendants Taco Bell or Taco Bell of America employed
2 Plaintiffs and other persons as non-exempt or hourly paid
3 restaurant employees in California. Although Plaintiffs have not
4 yet filed their Consolidated Complaint and thus, Defendants have
5 not yet responded, Defendants deny any and all allegations that
6 Plaintiffs assert above and have previously asserted in each
7 individual action prior to consolidation. Specifically,
8 Defendants deny that Plaintiffs or any other putative class
9 member are entitled to any type of relief in this action,
10 including, without limitation, unpaid compensation, unreimbursed
11 business expenses, wages and interest thereon, damages, statutory
12 penalties, and penalties under PAGA. Defendants deny that
13 Plaintiffs are entitled to recover attorneys' fees and costs and
14 any other relief they seek from the Court.

15 2. Defendants also deny that Plaintiff Leyva was
16 wrongfully terminated, and they deny that Plaintiff Leyva is
17 entitled to any type of relief for her alleged wrongful
18 termination claim. Defendants also believe that Plaintiff Leyva
19 has no basis for including in the Consolidated Complaint a cause
20 of action to secure the payment of workers' compensation benefits
21 to her, as such a cause of action was not asserted in her
22 complaint filed in her individual action.

23 Defendants' Statement Regarding the Threshold Issue of
24 Whether Yum and Its "Retail Restaurant Subsidiaries" are
25 Integrated Enterprises.

26 3. Plaintiffs assert that they will claim in their
27 Consolidated Complaint that Yum and "Yum's retail restaurant
28 subsidiaries" are integrated enterprises making Yum the employer

1 of individuals working in "Yum's retail restaurant subsidiaries."
2 Yum plans to file a motion for summary judgment on this issue as
3 soon as possible which, if granted, will dispose of all claims
4 against Yum and any Yum retail restaurant subsidiaries not
5 specifically named in the Consolidated Complaint.

6 4. Yum denies that it and its retail restaurant
7 subsidiaries are integrated enterprises.

8 V. Orders Re Amendments To Pleadings.

9 Plaintiffs' Statement

10 1. Consistent with the Court's June 9, 2009 Pretrial
11 Order, Plaintiffs will be filing a Consolidated Complaint on or
12 before June 30, 2009. Defendants will have twenty-one (21) days
13 from service of the Consolidated Complaint to answer or otherwise
14 respond.

15 Defendants' Statement

16 2. While the June 9, 2009 Pretrial Order requires
17 Plaintiffs to file a Consolidated Complaint on or before June 30,
18 2009, this Order does not permit Plaintiffs to amend their
19 pleadings by adding new allegations against the defendants or
20 adding additional parties to the action. To the extent that
21 Plaintiffs attempt to broaden the causes of actions they assert
22 through the Consolidated Complaint, Defendants believe that this
23 is not permitted by the June 9, 2009 Pretrial Order.

24 VI. Factual Summary.

25 A. Admitted Facts Which Are Deemed Proven Without Further
26 Proceedings.

27 1. Plaintiff Medlock is an individual resident of the
28 Eastern District of California, Fresno Division, at all times

1 alleged in the complaint.

2 2. Plaintiff Medlock was employed at times alleged in
3 the complaint by Taco Bell Corp. Discovery will ascertain
4 whether Ms. Medlock was employed by any other named Defendant.

5 3. Plaintiff Hardiman was formerly a resident of the
6 Eastern District of California. Discovery will ascertain the
7 time periods during which Plaintiff Hardiman was a resident of
8 the Eastern District of California.

9 4. Plaintiff Hardiman was employed by Taco Bell Corp.
10 and/or Taco Bell of America, Inc. Discovery will ascertain the
11 time periods during which Plaintiff Hardiman was employed by Taco
12 Bell Corp. and/or Taco Bell of America, Inc.

13 5. Plaintiff Leyva is an individual resident of the
14 State of California, at all times alleged in the complaint.

15 6. Plaintiff Leyva was employed at certain times
16 alleged in the complaint by Taco Bell Corp. and/or Taco Bell of
17 America, Inc. Discovery will ascertain whether Ms. Leyva was
18 employed by any other named Defendant.

19 7. Plaintiff Naranjo is an individual resident of the
20 State of California, at all times alleged in the complaint.

21 8. Plaintiff Naranjo was employed at certain times
22 alleged in the complaint by Taco Bell Corp. and/or Taco Bell of
23 America, Inc. Discovery will ascertain whether Ms. Naranjo was
24 employed by any other named Defendant.

25 9. Taco Bell Corp. is a California corporation
26 licensed to do and doing business in the State of California.

27 10. Taco Bell of America, Inc. is a Delaware
28 corporation licensed to do business in the State of California.

1 ///

2 B. Contested Facts.

3 1. Whether Yum! Brands, Inc. is a joint employer or
4 integrated enterprise with its subsidiaries, including Taco Bell
5 Corp. and/or Taco Bell of America, Inc.

6 2. Whether Defendants failed to pay proper overtime,
7 in violation of California Labor Code §§ 510 and 1198.

8 3. Whether Defendants failed to provide meal periods
9 or compensation in lieu thereof, in violation of California Labor
10 Code §§ 226.7(a) and 512(a).

11 4. Whether Defendants failed to provide rest periods
12 or compensation in lieu thereof, in violation of California Labor
13 Code § 226.7(a).

14 5. Whether Defendants complied with wage reporting as
15 required by California Labor Code § 226(a).

16 6. Whether Defendants failed to promptly pay all
17 wages due to Plaintiffs and putative class members upon their
18 discharge or resignation, in violation of California Labor Code
19 §§ 201 and 202.

20 7. Whether Defendants' conduct was willful or
21 reckless under California Labor Code § 203.

22 8. Whether Defendants failed to pay wages, in
23 violation of California Labor Code § 204.

24 9. Whether Defendants failed to pay minimum wages, in
25 violation of California Labor Code § 1194.

26 10. Whether Defendants forced Plaintiffs and other
27 putative class members to contribute to the capital and expenses
28 of Defendants' businesses, in violation of California Labor Code

1 §§ 2800 and 2802.

2 11. Whether Defendants failed to pay all vested
3 accrued vacation wages (including, but not limited to, vacation
4 pay, personal day pay, personal holiday pay, and/or floating
5 holiday pay) during and at the end of their employment.

6 12. Whether Defendants engaged in unfair business
7 practices in violation of California Business & Professions Code
8 §§ 17200, et seq.

9 13. Whether any damages, restitution, monetary
10 penalties, or PAGA penalties resulted from Defendants' alleged
11 violations of California law.

12 14. Whether any damages, restitution, monetary
13 penalties, or PAGA penalties resulted from Defendants' alleged
14 violations of California law.

15 15. Whether Defendants' affirmative defenses bar the
16 claims of Plaintiffs and other putative class members or limit
17 their recovery, if any, of damages, restitution, monetary
18 penalties, or PAGA penalties.

19 16. Whether the claims of Plaintiffs are subject to
20 class certification.

21 17. Whether Defendants deliberately, intentionally,
22 and wrongfully fired Plaintiff Leyva without just cause, ending
23 her employment on July 26, 2007.

24 VII. Legal Issues.

25 A. Uncontested.

26 1. Jurisdiction exists under 28 U.S.C. § 1332.

27 2. Venue is proper under 28 U.S.C. § 1441(a).

28 3. The parties agree that the substantive law of the

1 State of California provides the rule of decision.

2 B. Contested.

3 1. Whether there are common questions of law and fact
4 and, therefore, whether certification as a class action is
5 appropriate (including but not limited to issues of adequacy,
6 commonality, typicality, and superiority).

7 2. Whether Defendants failed to pay proper overtime,
8 in violation of California Labor Code §§ 510 and 1198.

9 3. Whether Defendants failed to provide meal periods
10 or compensation in lieu thereof, in violation of California Labor
11 Code §§ 226.7(a) and 512(a).

12 4. Whether Defendants failed to provide rest periods
13 or compensation in lieu thereof, in violation of California Labor
14 Code § 226.7(a).

15 5. Whether Defendants complied with wage reporting as
16 required by California Labor Code § 226(a).

17 6. Whether Defendants failed to promptly pay all
18 wages due to Plaintiffs and putative class members upon their
19 discharge or resignation, in violation of California Labor Code
20 §§ 201 and 202.

21 7. Whether Defendants' conduct was willful or
22 reckless under California Labor Code § 203.

23 8. Whether Defendants failed to pay wages, in
24 violation of California Labor Code § 204.

25 9. Whether Defendants failed to pay minimum wages, in
26 violation of California Labor Code § 1194.

27 10. Whether Defendants forced Plaintiffs and other
28 putative class members to contribute to the capital and expenses

1 of Defendants' businesses, in violation of California Labor Code
2 §§ 2800 and 2802.

3 11. Whether Defendants failed to pay all vested
4 accrued vacation wages (including, but not limited to, vacation
5 pay, personal day pay, personal holiday pay, and/or floating
6 holiday pay) during the course of employment and at the end of
7 their employment.

8 12. Whether Defendants engaged in unfair business
9 practices in violation of California Business & Professions Code
10 §§ 17200, et seq.

11 13. Whether any damages, restitution, PAGA penalties,
12 or monetary penalties resulted from Defendants' alleged
13 violations of California law.

14 14. Whether Defendants' affirmative defenses bar the
15 claims of Plaintiffs and other putative class members or limit
16 their recovery, if any, of damages, restitution, monetary
17 penalties, or PAGA penalties.

18 15. Whether Defendants deliberately, intentionally,
19 and wrongfully fired Plaintiff Leyva without just cause, ending
20 her employment on July 26, 2007.

21 VIII. Consent to Magistrate Judge Jurisdiction.

22 1. The parties have not consented to transfer the
23 case to the Magistrate Judge for all purposes, including trial.

24 VIX. Corporate Identification Statement.

25 1. Any nongovernmental corporate party to any action in
26 this court shall file a statement identifying all its parent
27 corporations and listing any entity that owns 10% or more of the
28 party's equity securities. A party shall file the statement with

1 its initial pleading filed in this court and shall supplement the
2 statement within a reasonable time of any change in the
3 information.

4 X. Discovery Plan and Cut-Off Date.

5 Initial Disclosures

6 1. Although initial disclosures were exchanged in the
7 Medlock and Hardiman Actions prior to consolidation (but not in
8 the Leyva or Naranjo Actions), the parties have agreed that
9 consolidated initial disclosures will be exchanged 5 court days
10 after Plaintiffs file the Consolidated Complaint.

11 Plaintiffs' Statement

12 2. Plaintiffs have concluded one Rule 30(b)(6) deposition,
13 and expect to conduct additional 30(b)(6) depositions. To that
14 end, Plaintiffs have noticed additional 30(b)(6) depositions and
15 the parties have been negotiating in good faith to schedule those
16 additional depositions, including for the vacation claim.
17 Plaintiffs also expect to conduct at least one deposition for
18 every expert designated by Defendants and a number of individual
19 depositions. The number of expected depositions will depend on
20 the course of discovery and the documents available for
21 Plaintiff's examination.

22 3. Plaintiffs have propounded written discovery on
23 Defendants, including interrogatories, requests for documents,
24 and requests for admissions, and expect to propound additional
25 written discovery in follow-up to the earlier discovery. To the
26 extent there are any discovery disputes, the parties will meet
27 and confer about them in good faith in an effort to avoid Court
28 intervention. Additionally, in light of the consolidation,

1 Plaintiffs intend to propound written discovery regarding the
2 vacation claim against Defendants, the propriety of Yum! Brands,
3 Inc. as a defendant, and whether Plaintiff Leyva was wrongfully
4 terminated.

5 4. Plaintiffs anticipate calling a number of putative
6 class members to offer a representative sampling of the Class as
7 a whole. Plaintiffs also anticipate calling at least one expert
8 to testify on liability issues and at least one expert to testify
9 on damage issues. Damages are expected to be proven by
10 statistical sampling. Until additional discovery is conducted,
11 Plaintiffs cannot estimate the number of hostile witnesses that
12 will be called.

13 5. The allegations in this matter implicate the policies
14 applicable to a large number of current employees and former
15 employees over a lengthy time period and across the entire state.
16 Accordingly, Plaintiffs believe that certification discovery
17 should be allowed at this time. Plaintiffs recognize that some
18 discovery may impact both certification and merits discovery;
19 however, Plaintiffs will focus to ensure that the discovery
20 sought will relate to the certification issue, even to the extent
21 it may impact liability or damages issues.¹

22 6. Defendants intend to re-depose Plaintiff Hardiman.

23
24 ¹ The clearest example of this is class size. Discovery
25 related to this issue would impact not only certification issues,
26 i.e., numerosity, but would also relate to the calculation of
27 damages, an issue that is typically related to merits discovery.
28 By refusing the false dichotomy between class discovery and
merits discovery, and instead focusing on discovery that impacts
certification issues, the parties will avoid discovery battles
that will likely need extensive involvement by this Court.

1 Under Fed. R. Civ. P. 30(a)(2)(A)(ii), a court order is required
2 to re-depose a witness previously deposed in the same case. The
3 Medlock and Hardiman actions were deemed related on August 4,
4 2008 and subsequently consolidated, along with the Leyva and
5 Naranjo actions, on May 19, 2009. Although the prior deposition
6 of Ms. Hardiman ostensibly was not, in name, a "named plaintiff"
7 deposition, it was one in substance. Plaintiff therefore does
8 not understand Defendants' request for a second deposition of Ms.
9 Hardiman, which would, in contravention of the policies behind
10 consolidation, be duplicative and burdensome.

11 Defendants' Statement

12 7. Defendants agree that discovery should be conducted in
13 two phases, with the current phase being limited to class
14 certification discovery. The second phase, if necessary, would
15 occur after the Court's ruling on any motion or motions related
16 to class certification. This second phase would relate to the
17 merits of Plaintiffs' claims, including damages.

18 8. Defendants believe that in the first phase of
19 discovery, Plaintiffs should be precluded from taking discovery
20 from Yum on any issue not directly related to their theory that
21 Yum and Yum's "retail restaurant subsidiaries" are integrated
22 enterprises. If Yum's motion for summary judgment is granted, no
23 other discovery related to Yum will be necessary. Defendants'
24 proposal will result in a meaningful conservation of resources,
25 if Yum's motion is granted. Additionally, since Yum intends to
26 bring its motion for summary judgment early and Plaintiffs
27 propose that the class certification discovery cut-off date be
28 set for June 2010, Plaintiffs will have plenty of time to

1 complete additional discovery regarding Yum if Yum does not
2 prevail on its summary judgment motion.

3 9. Defendants anticipate deposing Naranjo, Leyva and
4 Hardiman as named plaintiffs in the Consolidated Cases and
5 several other individuals. Defendants have already deposed
6 Medlock and Hardiman, but at the time Defendants deposed
7 Hardiman, Hardiman was not a named plaintiff and Medlock and
8 Hardiman were not deposed about vacation time claims or any
9 issues related to Yum. The number of expected depositions will
10 depend on the course of discovery and the evidence submitted in
11 support of Plaintiffs' anticipated Motion for Class
12 Certification. Defendants expect to conduct at least one
13 deposition for every expert designated by Plaintiffs. Defendants
14 also expect to propound additional written discovery.

15 Changes to Timing, Form, or Requirement for Disclosures.
16 Plaintiffs' Statement.

17 1. In light of the consolidation, the inherent complexity
18 of a wage and hour class action, and the fact that written
19 discovery has already been taken in the Medlock and Hardiman
20 Actions, Plaintiffs request that Plaintiffs and Defendants each
21 be able to propound an additional 50 interrogatories beyond the
22 number previously propounded.

23 Defendants' Statement.

24 2. Defendants agree with Plaintiffs' position that
25 Plaintiffs will be entitled to propound an additional 50
26 interrogatories in the Consolidated Action and that Defendants
27 will be entitled to propound the same number of additional
28 interrogatories.

1 ///

2 Subjects on Which Discovery May be Needed.

3 Plaintiff's Statement.

4 1. Plaintiffs have conducted discovery - and intend to
5 conduct further discovery - on the following, non-exhaustive list
6 of subjects: whether certification as a class action is
7 appropriate; whether Defendants failed to pay proper wages, in
8 violation of the California Labor Code; whether Defendants failed
9 to pay proper overtime, in violation of the California Labor
10 Code; whether Defendants complied with wage reporting as required
11 by the California Labor Code; whether Defendants failed to
12 provide meal and rest periods or compensation in lieu thereof;
13 whether Defendants forced Plaintiffs and other putative class
14 members to contribute to the capital and expenses of Defendants'
15 businesses, whether Defendants failed to timely pay employees who
16 left Defendants' employ; whether Defendants' conduct was willful
17 or reckless; whether Defendants engaged in unfair business
18 practices in violation of the California Business & Professions
19 Code §§ 17200, et seq., and the appropriate amount of damages,
20 restitution, or monetary penalties, if any, resulting from
21 Defendants' alleged violations of California law.

22 2. Plaintiffs will meet and confer with Defendants
23 regarding any discovery disputes in an effort to avoid Court
24 intervention.

25 3. Additionally, Plaintiffs intend to conduct discovery
26 regarding, without limitation, whether Defendants failed to pay
27 all vested accrued vacation wages (including, but not limited to,
28 vacation pay, personal day pay, personal holiday pay, and/or

1 floating holiday pay) during the course of employment and at the
2 end of their employment; whether Yum! Brands, Inc. is a proper
3 defendant in the consolidated actions; and whether Defendants
4 wrongfully terminated Plaintiff Leyva.

5 Defendants' Statement.

6 4. In the first discovery phase, Defendants intend to
7 conduct discovery on all issues related to whether certification
8 as a class action is appropriate. Only if Plaintiffs'
9 anticipated Motion for Class Certification is granted will
10 Defendants then proceed to the second discovery phase and conduct
11 discovery on the merits of Plaintiffs' claims and their defenses
12 as well as on damages issues.

13 Claims of Privilege or of Protection.

14 1. In the Court's June 9, 2009, Pretrial Order, the Court
15 indicated that the protective order that was entered in the
16 Medlock Action will apply to and be deemed entered in the In Re
17 Taco Bell Wage And Hour Actions.

18 Disclosure or Discovery of Electronically Stored
19 Information.

20 1. The parties have met and conferred and confirmed that
21 each has taken steps to help ensure the preservation of potential
22 discovery materials. The parties have also met and conferred
23 regarding the disclosure and discovery of electronically stored
24 information, including the form or forms in which it should be
25 produced, pursuant to Rule 26(f)(3) of the Federal Rules of Civil
26 Procedure.

27 Court Scheduling of Case.

28 1. The issue of whether Yum! Brands, Inc. is a proper

1 party defendant shall be addressed by dispositive motion. The
2 parties shall have 120 days to conduct discovery on this issue
3 through and including October 26, 2009. Within 30 days
4 following, Defendants shall file any dispositive motion
5 concerning Yum! Brands, Inc.'s inclusion in the lawsuit as a
6 Defendant on or before November 30, 2009. The filing and hearing
7 schedule for the Yum! party issue shall be in accordance with the
8 Local Rules of the Eastern District of California.

9 Class Certification Schedule.

10 2. The close of class certification discovery shall be
11 June 24, 2010. The deadline to file motions re: class
12 certification is August 26, 2010. Oppositions shall be due
13 October 26, 2010. Replies shall be filed on or before December
14 6, 2010. The class certification motion will be heard on January
15 10, 2011, at 11:00 a.m. and the Court will reserve extended time
16 for oral arguments.

17 3. The parties agree that during the briefing period for
18 class certification motions, that limited discovery shall be
19 permitted for issues raised by evidentiary showings made by
20 Plaintiffs' Motion to Certify and Defendants' Oppositions to the
21 Motion for Certification.

22 XI. Motions - Hard Copy.

23 1. The parties shall submit one (1) courtesy paper copy to
24 the Court of any motions filed that exceed ten pages and any
25 motions that have exhibits attached. Exhibits shall be marked
26 with protruding numbered or lettered tabs so that the Court can
27 easily identify such exhibits.

28 XII. Trial.

1 1. Plaintiffs have demanded a jury trial. Defendants
2 reserve the right to object to Plaintiffs' entitlement to a jury
3 trial.

4 XIII. Further Scheduling Conference.

5 1. Following the decision on the Class Certification
6 Motion, a Further Scheduling Conference will be held to adopt a
7 final schedule for the trial and disposition of this action.

8 XIV. Request For Bifurcation, Appointment Of Special Master,
9 Or Other Techniques To Shorten Trial.

10 1. Premature issue at this time.

11 XV. Related Matters Pending.

12 1. On February 11, 2009, Plaintiff Endang Widjaja filed a
13 class action complaint against Taco Bell Corp. and Yum! Brands,
14 Inc. in the Superior Court of the State of California for the
15 County of Orange alleging four causes of action: failure to
16 reimburse business expenses, failure to provide rest periods,
17 unfair business practices in violation of § 17200 of the Business
18 and Professions Code, and conversion. The *Widjaja* action was
19 removed to the United States District Court for the Central
20 District of California. On June 8, 2009, Judge Carter granted
21 Taco Bell and Yum's motion to transfer the case to the United
22 States District Court for the Eastern District of California, and
23 the *Widjaja* case is currently being transferred to this Court.
24 Taco Bell and Yum will file a notice of related case as soon as
25 the *Widjaja* case is formally transferred to this Court.

26 2. Taco Bell and Yum believe that the *Widjaja* case is
27 duplicative of the Consolidated Cases and, accordingly, *Widjaja*
28 should be dismissed or stayed or, in the alternative,

1 consolidated with the Consolidated Cases. Counsel for Taco Bell
2 and Yum have forwarded the *Widjaja* complaint to Interim Lead
3 Counsel and are meeting and conferring with Interim Lead Counsel
4 on how to address handling the *Widjaja* case.

5 XVI. Compliance With Federal Procedure.

6 1. The Court requires compliance with the Federal
7 Rules of Civil Procedure and the Local Rules of Practice for the
8 Eastern District of California. To aid the court in the
9 efficient administration of this case, all counsel are directed
10 to familiarize themselves with the Federal Rules of Civil
11 Procedure and the Local Rules of Practice of the Eastern District
12 of California, and keep abreast of any amendments thereto.

13 XVII. Effect Of This Order.

14 1. The foregoing order represents the best
15 estimate of the court and counsel as to the agenda most suitable
16 to bring this case to resolution. The trial date reserved is
17 specifically reserved for this case. If the parties determine at
18 any time that the schedule outlined in this order cannot be met,
19 counsel are ordered to notify the court immediately of that fact
20 so that adjustments may be made, either by stipulation or by
21 subsequent scheduling conference.

22 2. Stipulations extending the deadlines contained
23 herein will not be considered unless they are accompanied by
24 affidavits or declarations, and where appropriate attached
25 exhibits, which establish good cause for granting the relief
26 requested.

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1 3. Failure to comply with this order may result in
2 the imposition of sanctions.

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4 IT IS SO ORDERED.

5 Dated: July 2, 2009

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

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