

1 UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF CALIFORNIA
3

4 IN RE TACO BELL WAGES AND HOUR
5 ACTIONS

Master file:
1:07-cv-01314 OWW DLB

6 MEMORANDUM DECISION AND ORDER
7 RE PLAINTIFF'S AMENDED MOTION
8 FOR LEAVE TO FILE FIRST
9 AMENDED CONSOLIDATED
10 COMPLAINT.

(DOC. 210)

11 I. INTRODUCTION

12 Plaintiffs move for leave to file a First Amended
13 Consolidated Complaint. Doc. 210. Defendants oppose the motion.
14 Doc. 214. The matter was heard on April 11, 2011.

15 II. FACTUAL BACKGROUND

16 This case is a consolidation of six related cases: (1)
17 *Medlock v. Taco Bell Corp.*, Case No. 1:07-cv-01314; (2) *Hardiman*
18 *v. Taco Bell Corp.*, Case No. 1:08-cv-01081; (3) *Leyva v. Taco*
19 *Bell Corp., et al.*, Case No. 1:09-cv-00200; (4) *Naranjo v. Yum!*
20 *Brands, Inc.*, Case No. 1:09-cv-00246; (5) *Widjaja v. Yum Brands,*
21 *Inc.*, Case No. 1:09-cv-01074; and (6) *Nave v. Taco Bell Corp.*,
22 Case No. 1:10-cv-02222.

23
24 The *Medlock* case was originally filed September 7, 2007.
25 Pursuant to the Original and Amended Scheduling Conference Order,
26 the deadline to file any motions to amend the complaint was March
27 24, 2008. Docs. 38 and 42. On that date, the *Medlock* Plaintiffs
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1 moved for leave to file a Second Amended Complaint, which was
2 denied. Doc. 61.

3 The *Medlock, Hardiman, Leyva, and Naranjo* cases were
4 consolidated May 19, 2009; the consolidated action was designated
5 *In re Taco Bell Wage and Hour Actions*. Docs. 104, 109. A
6 scheduling conference order dated June 29, 2009 (Doc. 117) and an
7 amended scheduling conference dated July 7, 2009 (Doc. 119) set
8 forth the following schedule: (1) June 30, 2009: deadline to file
9 a Consolidated Complaint; (2) June 24, 2010: deadline for class
10 certification discovery; (3) August 26, 2010 (extended to
11 December 30, 2010 (Doc. 178)): deadline to file motions regarding
12 class certification; (4) October 26, 2010 (extended to April 22,
13 2011 (Doc. 202)): deadline for Defendants' opposition to class
14 certification; (5) December 6, 2010 (extended to May 20, 2011
15 (Doc. 202)): deadline for Plaintiffs' reply; and (6) January 10,
16 2011 (continued to June 6, 2011 (Doc. 202)): class certification
17 hearing.
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20 On June 29, 2009, Plaintiffs filed a Consolidated Complaint
21 alleging: (1) unpaid overtime; (2) unpaid minimum wages; (3)
22 unpaid wages; (4) missed meal periods; (5) missed rest periods;
23 (6) non-compliant wage statements; (7) unreimbursed business
24 expenses; (8) vested accrued vacation wages; (9) non-payment of
25 wages upon termination; and (10) non-payment of wages during
26 employment. The Consolidated Complaint also asserts a claim for
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1 violation of California Business & Professions Code 17200, et
2 seq. and penalties pursuant to California Labor Code sections
3 2698, et seq. ("PAGA"). Doc. 118-1.

4 The *Widjaja* action was consolidated with *In re Taco Bell* on
5 October 22, 2009. Doc. 132.

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7 On November 29, 2010, Teresa Nave filed a putative class
8 action against Defendants alleging: (1) missed rest periods, (2)
9 unpaid vested accrued vacation time, (3) non-payment of wages
10 upon termination, and (4) violation of California Business &
11 Professions Code §§ 17200, et seq. Case No. 1:10-cv-2222-OWW-DVB,
12 Doc. 1. On December 9, 2010, the Nave complaint was amended,
13 adding Christopher Duggan, Kevin Taylor, and Debra Doyle as named
14 Plaintiffs. *Id.* at Doc. 10. The Nave case was consolidated with
15 *In re Taco Bell* on December 16, 2010.

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17 On December 30, 2010, Plaintiffs filed a motion for class
18 certification. Doc. 185.

19 On March 14, 2011, Plaintiffs filed an amended motion for
20 leave to file the First Amended Consolidated Complaint (Doc.
21 210). Defendants filed an opposition (Doc. 214), to which
22 Plaintiffs replied (Doc. 215).

23 24 III. LEGAL STANDARD

25 Because a Rule 16 scheduling order is in place establishing
26 a timetable for amending pleadings and the deadline expired
27 before Plaintiffs moved to amend the Consolidated Complaint,
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1 resolution of the motion to amend is governed by Federal Rule of
2 Civil Procedure 16. *Coleman v. Quaker Oats Co.*, 232 F.3d 1271,
3 1294 (9th Cir. 2000). Rule 16(b) provides that "[a] schedule shall
4 be modified only for good cause and with the judge's consent."
5 Fed. R. Civ. P. 16(b)(4). Rule 16(b)'s "good cause" standard
6 primarily considers the diligence of the party seeking the
7 amendment. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604,
8 609 (9th Cir. 1992).

10 [C]arelessness is not compatible with a finding of diligence
11 and offers no reason for relief ... Although the existence
12 or degree of prejudice to the party opposing the
13 modification might supply additional reasons to deny a
14 motion, the focus of the inquiry is upon the moving party's
15 reasons for seeking modification ... If that party was not
16 diligent, the inquiry should end.

17 *Id.*

18 If "good cause" within the meaning of Rule 16(b) is shown,
19 the party seeking leave to amend must then demonstrate that leave
20 to amend is appropriate under Rule 15, Federal Rules of Civil
21 Procedure. *See id.* at 608.

22 Rule 15(a) of the Federal Rules of Civil Procedure provides
23 that a party may amend its pleadings "only with the opposing
24 party's written consent or the court's leave" and that "the court
25 should freely give leave when justice so requires." Fed. R. Civ.
26 P. 15(a)(2). This rule should be applied with "extreme
27 liberality" in favor of allowing amendments in the early stages
28 of a case. *See Jones v. Bates*, 127 F.3d 839, 847 n.8 (9th Cir.

1 1997). A court should consider four factors in determining
2 whether to grant leave to amend: (1) undue delay, (2) bad faith,
3 (3) futility of amendment, and (4) prejudice to the opposing
4 party. *United States v. Pend Oreille Pub. Util. Dist. No. 1*, 926
5 F.2d 1502, 1511 (9th Cir. 1991). Delay alone is not sufficient
6 grounds for denying leave to amend. *Id.* The consideration of
7 prejudice to the opposing party is the most important factor.
8 *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th
9 Cir. 2003) ("Prejudice is the 'touchstone of the inquiry under
10 Rule 15(a)"). Absent prejudice, or a strong showing of any of the
11 remaining factors, there is a presumption under Rule 15(a) in
12 favor of granting leave to amend. *Id.* "'Where there is a lack of
13 prejudice to the opposing party and the amended complaint is
14 obviously not frivolous, or made as a dilatory maneuver in bad
15 faith, it is an abuse of discretion' to deny leave to amend."
16 *Pend Oreille*, 926 F.2d at 1511-1512 (citing *Howey v. U.S.*, 481
17 F.2d 1187, 1190-91 (9th Cir. 1973)). However, "[w]hile
18 Fed.R.Civ.P. 15(a) encourages leave to amend, district courts
19 need not accommodate futile amendments." *Newland v. Dalton*, 81
20 F.3d 904, 907 (9th Cir. 1996).

24 IV. ANALYSIS

25 1. Addition of New Nave Named Plaintiff

26 Plaintiffs seek leave to add Hilario Escobar to the original
27 Nave Plaintiffs. Plaintiffs assert that the addition of Mr.
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1 Escobar is necessary to represent the non-management employee
2 vacation subclass.

3 In support of Plaintiffs' Motion for Class Certification
4 filed December 30, 2010, only Teresa Nave and Kevin Taylor of the
5 original Nave Plaintiffs submitted declarations. During Mr.
6 Taylor's January 27, 2011 deposition, his paycheck verification
7 reports were produced, which revealed that Mr. Taylor had worked
8 between 10-15 hours per week and was not eligible for vacation
9 pay. On February 17, 2011, Defendants produced Ms. Nave's
10 employee file, which revealed that Ms. Nave was paid accrued
11 vacation on or about the date she was terminated, July 17, 2007.
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13 Ms. Nave is in the process of withdrawing as a named
14 Plaintiff. At the hearing, Plaintiffs stated that the Nave
15 Plaintiffs do not have a proper class representative.
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17 Plaintiffs assert that once it became apparent that Ms. Nave
18 and Mr. Taylor could not represent the non-management employee
19 vacation subclass, they immediately conducted a diligent search
20 before finding Mr. Escobar. Defendants rejoin that Plaintiffs did
21 not act with diligence: (1) Plaintiffs could have obtained Ms.
22 Nave and Mr. Taylor's employment records before filing the
23 lawsuit and (2) Ms. Nave and Mr. Taylor authorized the release of
24 their employment records in December 2010 but Plaintiffs did not
25 request their records until late January and February 2011.
26 However, the Nave class was represented by different counsel
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1 before its consolidation with this action.

2 Plaintiffs contend that allowing Plaintiffs to amend their
3 Complaint to add a new named plaintiff to serve as a potential
4 class representative is mandated by case law. *Kagan v. Gibraltar*
5 *Sav. & Loan Ass'n*, 35 Cal.3d 582, 596, 200 Cal.Rptr. 38 (1984)
6 ("However, should the trial court conclude that plaintiff cannot
7 suitably represent the class, it should afford her 'the
8 opportunity to amend [her] complaint, to redefine the class, or
9 to add new individual plaintiffs, or both, in order to establish
10 a suitable representative.'" (quoting *La Sala v. American Sav. &*
11 *Loan Assn.*, 5 Cal. 3d 864, 872 (1971)), *overruled on other*
12 *grounds, Meyer v. Sprint Spectrum L.P.*, 45 Cal. 4th 634 (2009).
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15 The Nave lawsuit was filed November 29, 2010; Plaintiffs
16 discovered that Ms. Nave and Mr. Taylor could not represent the
17 non-management employee vacation subclass on January 27, 2011 and
18 February 17, 2011, respectively; and Plaintiffs' motion to amend
19 was filed March 14, 2011. Only two and half months have lapsed
20 since the initiation of the Nave lawsuit on November 29, 2010 and
21 February 17, 2011, when Plaintiffs learned they did not have a
22 class representative. Because Plaintiffs have been diligent,
23 Plaintiffs' motion to add a new named Plaintiff to represent the
24 Nave subclass is supported by good cause. There is no evidence of
25 Plaintiffs' bad faith. Plaintiffs believe that Mr. Escobar's
26 claims are typical of the class. It is not explained how the
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1 addition of a new named Plaintiff to represent the Nave
2 Plaintiffs causes prejudice to Defendants.

3 Plaintiffs' motion to amend the Consolidated Complaint to
4 add Hilario Escobar as a named Plaintiff is GRANTED.

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6 2. Amendment of Plaintiff Subclass Definitions

7 Plaintiffs also seek leave to amend the Plaintiff subclass
8 definitions, as follows:

- 9 a. Subclass 1 ("~~Late Meal Break Subclass Taco Bell Unpaid~~
10 ~~Wages Subclass~~"):
11 All persons who work or worked as a non-exempt, hourly-
12 paid employee at a corporate-owned Taco Bell restaurant
13 in California from September 7, 2003 until the resolution
14 of this lawsuit ~~All non-exempt or hourly-paid employees~~
~~of TACO BELL CORP. and/or TACO BELL OF AMERICA, INC. in~~
~~the State of California from September 7, 2003 until the~~
~~resolution of this lawsuit;~~
- 15 b. Subclass 2 ("~~Underpaid Automatic Adjustments Subclass~~
16 ~~Yum! Unpaid Wages Subclass~~"):
17 All persons who work or worked as a non-exempt, hourly-paid employee at a
18 corporate-owned Taco Bell restaurant in California from
19 September 7, 2003 until the resolution of this lawsuit
20 who received at least one 30-minute automatic adjustment
21 on Taco Bell's Time and Attendance System ~~All non-exempt~~
~~or hourly-paid employees of YUM! BRANDS, INC. in the~~
~~State of California from November 5, 2004 until the~~
~~resolution of this lawsuit, excluding any members of~~
~~Subclass 1;~~
- 22 c. Subclass 3 ("~~On-Duty Meal Period Agreement Subclass Taco~~
23 ~~Bell Improper Wage Statements Subclass~~"):
24 All persons who work or worked as a nonexempt, hourly-paid employee at a
25 corporate-owned Taco Bell restaurant in California from
26 September 7, 2003 until the resolution of this lawsuit
27 who
28 signed an on-duty meal period agreement ~~All non-exempt or~~
~~hourly-paid employees of TACO BELL CORP. and/or TACO BELL~~
~~OF AMERICA, INC. in the State of California who were~~
~~provided inaccurate wages statements from September 7,~~
~~2006 until the resolution of this lawsuit;~~

- 1 d. Subclass 4 ("Unpaid On-Duty Meal Period Subclass ~~Yum!~~
2 ~~Improper Wage Statements Subclass~~"): All persons who work
3 or worked as a non-exempt, hourly-paid employee at a
4 corporate-owned Taco Bell restaurant in California from
5 September 7, 2003 until the resolution of this lawsuit
6 who signed an on-duty meal period agreement ~~All non-exempt
or hourly-paid employees of YUM! BRANDS, INC. in the
7 State of California who were provided inaccurate wages
8 statements from November 5, 2007 until the resolution of
9 this lawsuit, excluding any members of Subclass 3;~~
- 7 e. Subclass 5 ("Rest Break Subclass ~~Taco Bell Unreimbursed
8 Business Expenses Subclass~~"): All persons who work or
9 worked as a non-exempt, hourly-paid employee at a
10 corporate-owned Taco Bell restaurant in California from
11 September 7, 2003 until the resolution of this lawsuit,
12 and who worked in any non-management employee position,
13 including, without limitation, any of the following job
14 positions: Crew Member, Team Member, Food Champion,
15 Service Champion, Service/Food Champion, Shift Lead,
16 Shift Lead Trainee, Team Member Trainer, and/or Trainee
17 ~~All non-exempt or hourly-paid employees of TACO BELL
18 CORP. and/or TACO BELL OF AMERICA, INC. in the State of
19 California who incurred business-related expenses and
20 costs that were not reimbursed from September 7, 2003
21 until the resolution of this lawsuit;~~
- 16 f. Subclass 6 ("Final Pay Subclass ~~Yum! Unreimbursed
17 Business Expenses Subclass~~"): All persons who were
18 terminated involuntarily as a non-exempt, hourly-paid
19 employee at a corporate-owned Taco Bell restaurant in
20 California from September 7, 2004 until the resolution of
21 this lawsuit who were not timely tendered their wages
22 upon involuntary termination of employment. ~~All non-
23 exempt or hourly-paid employees of YUM! BRANDS, INC. in
24 the State of California who incurred business-related
25 expenses and costs that were not reimbursed from November
26 5, 2004 until the resolution of this lawsuit, excluding
27 any members of Subclass 5; and~~
- 24 g. Subclass 7 ("Vested Accrued Vacation ~~Wages Time
25 Subclass~~"): All persons who formerly worked as an
26 employee at a corporate-owned Taco Bell restaurant in
27 California from November 5, 2004 until the resolution of
28 this lawsuit who were not paid all vested accrued
vacation wages (including, but not limited to, vacation
pay, personal day pay, personal holiday pay, and/or
floating holiday pay) at the end of their employment; and

1 ~~All non-exempt or hourly-paid past employees of TACO BELL~~
2 ~~CORP., TACO BELL OF AMERICA, INC., and/or YUM! BRANDS,~~
3 ~~INC. in the State of California who were not paid all~~
4 ~~vested accrued vacation wages (including, but not limited~~
5 ~~to, vacation pay, personal day pay, personal holiday pay,~~
6 ~~and/or floating holiday pay) at the end of their~~
7 ~~employment from November 5, 2004 until the resolution of~~
8 ~~this lawsuit.~~

9 h. Subclass 8 ("~~Non-Management Employee Vacation Subclass~~
10 ~~Taco Bell Final Pay Subclass~~") : All persons who formerly
11 worked as a non-exempt, hourly-paid employee at a
12 corporate-owned Taco Bell restaurant in California from
13 September 7, 2003 until the resolution of this lawsuit
14 who were not paid all vested accrued vacation wages
15 (including, but not limited to, vacation pay, personal
16 day pay, personal holiday pay, and/or floating holiday
17 pay) at the end of their employment, and who worked in
18 any non-management employee position, including, without
19 limitation, any of the following job positions: Crew
20 Member, Team Member, Food Champion, Service Champion,
21 Service/Food Champion, Shift Lead, Shift Lead Trainee,
22 Team Member Trainer, and/or Trainee. ~~All non-exempt or~~
23 ~~hourly-paid employees of TACO BELL CORP. and/or TACO BELL~~
24 ~~OF AMERICA, INC. in the State of California who were not~~
25 ~~timely tendered their wages upon termination of~~
26 ~~employment from September 7, 2004 until the resolution of~~
27 ~~this lawsuit;~~

28 i. Subclass 9 ("~~Yum! Final Pay Subclass~~") : ~~All non-exempt or~~
~~hourly-paid employees of YUM! BRANDS, INC. in the State~~
~~of California who were not timely tendered their wages~~
~~upon termination of employment from November 5, 2005~~
~~until the resolution of this lawsuit, excluding any~~
~~members of Subclass 8;~~

Doc. 210-2, Ex. B, ¶ 23.

Defendant contends that the amendment to Subclass 1 adds a
new subclass for late meal breaks that was not, but should have
been, included in the original Consolidated Complaint. Plaintiff
rejoins that it was included in the Consolidated Complaint,

1 albeit not in the Subclass definitions. The original Consolidated
2 Complaint alleges:

3 During the relevant time period, Plaintiffs, the other class
4 members, and the other aggrieved employees who were
5 scheduled to work for a period of time in excess of six (6)
6 hours were required to work for periods longer than five (5)
7 hours without a meal period of not less than thirty (30)
8 minutes.

9 Doc. 118-1, ¶ 77. It also alleges: "Defendants' conduct violates
10 applicable IWC Wage Orders and California Labor Code sections
11 226.7 and 512(a)." *Id.*

12 Defendant contends that the amendment to Subclass 3 adds a
13 new class for on-duty meal period agreements. Plaintiffs rejoin
14 that the allegations were encompassed in the following allegation
15 in the original Consolidated Complaint: "Defendants' conduct
16 violates applicable IWC Wage Orders and California Labor Code
17 sections 226.7 and 512(a)." Doc. 118-1, ¶ 77.

18 Defendant objects that Plaintiffs have expanded the statute
19 of limitations for the vacation subclass from November 5, 2004
20 (Doc. 118-1, ¶ 19(g)) to September 7, 2003 (Doc. Doc. 210-2, Ex.
21 A, ¶ 23(h)). Defendant also asserts that the vacation subclass in
22 the Consolidated Complaint consisted only of non-exempt, hourly
23 employees, while the amended subclass encompasses all employees.
24 Plaintiffs rejoin that the amendments conform the Nave vacation
25 class definition prior to consolidation.

26 Plaintiffs have not explained why they have waited to
27 seek leave to amend the Consolidated Complaint, over three years
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1 after the original *Medlock* lawsuit was filed, almost two years
2 after the original Consolidated Complaint was filed, after the
3 Motion for Class Certification has already been filed, and
4 shortly before the deadline for Defendant's opposition to the
5 Motion for Class Certification. The proposed changes to the
6 Subclasses substantively change the scope of the purported class
7 action. Plaintiffs assert that the changes conform to facts
8 revealed in discovery; however, discovery on class certification
9 closed June 24, 2010, nine months before Plaintiffs moved to
10 amend the Consolidated Complaint. Plaintiffs contend that the
11 changes conform the vacation subclass to the *Nave* subclasses;
12 however, the changes expand the statute of limitations and
13 broaden the vacation subclass. Plaintiffs have not offered facts
14 to demonstrate good cause for their belated motion to amend the
15 proposed Plaintiff Subclasses from the original Consolidated
16 Complaint. It is likely discovery would have to be reopened.
17 Plaintiffs' undue delay and substantive alterations to the class
18 definitions prejudice Defendant on the eve of filing their
19 opposition to the Motion for Class Certification, after
20 Plaintiffs' Motion for Class Certification has been filed.

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24 Plaintiffs' motion to amend the Consolidated Complaint to
25 amend the proposed Plaintiff Subclasses is DENIED.

26 3. Conforming Complaint to Facts Learned in Discovery

27 Plaintiffs also seek leave to amend the Consolidated
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1 Complaint to make the following changes:

- 2 (a) in the preamble, paragraphs 9 through 12, and 40
3 through 43, add allegations concerning Endang Widjaja,
4 Christopher Duggan, Kevin Taylor, and Debra Doyle;
5 (b) delete all allegations related to defendant Yum!
6 Brands, Inc.;
7 (c) in the Prayer for Relief, modify the Prayer for Relief
8 to specify the proposed appointments of class and/or
9 liaison counsel;
10 (d) in Paragraph 7, amend Plaintiff Miriam Leyva's current
11 residence; and
12 (e) in Paragraphs 36 through 39, amend allegations
13 pertaining to Plaintiffs Sandrika Medlock, Lisa
14 Hardiman, Miriam Leyva and Loraine Naranjo to reflect
15 their positions and approximate dates of employment for
16 Defendants.
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19 Plaintiffs contend that these clean-up amendments reflect
20 changes that have occurred since the filing of the Consolidated
21 Complaint, i.e., dismissal of Yum! Brands, Inc. as a defendant,
22 consolidation of the *Widjaja* and *Nave* lawsuits, and discovery of
23 relevant employment data. The *Widjaja* lawsuit was consolidated
24 October 22, 2009; Yum! Brands was dismissed from the lawsuit
25 March 31, 2010; class certification discovery ended June 24,
26 2010; and the *Nave* lawsuit was consolidated November 29, 2010.
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1 Plaintiffs have not explained why they did not seek to amend the
2 Consolidated Complaint earlier to reflect these changes. These
3 amendments result from Plaintiffs' lack of diligence. However,
4 Defendant does not claim prejudice from these non-substantive
5 changes.

6
7 Plaintiffs' motion to amend the Consolidated Complaint to
8 conform it with facts learned in discovery is GRANTED without
9 prejudice.

10
11 V. CONCLUSION

12 For the reasons stated:

13 1. Plaintiffs' motion for leave to file a first amended
14 consolidated complaint is GRANTED in part and DENIED in
15 part, as follows:

16 a. Plaintiffs' motion to add Mr. Escobar to the
17 Consolidated Complaint is GRANTED;

18 b. Plaintiffs' motion to amend the proposed Plaintiff
19 Subclasses is DENIED; and

20 c. Plaintiffs' motion to amend the Consolidated Complaint
21 to conform it with facts learned in discovery is
22 GRANTED.
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24 2. Plaintiffs shall submit a proposed form of order consistent
25 with this memorandum decision within five (5) days of
26 electronic service of this memorandum decision.
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28 SO ORDERED.

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DATED: May 3, 2011.

/s/ Oliver W. Wanger
Oliver W. Wanger
United States District Judge