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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

IN RE TACO BELL WAGE AND HOUR

CASE NO. CV F 07-1314 LJO DLB

**ORDER TO DENY RECONSIDERATION OF
CLASS CERTIFICATION**
(Doc. 347.)

BACKGROUND

For the third time, defendants Taco Bell Corp. and Taco Bell of America, Inc. (“Taco Bell”) argue the merits of class certification. After extensive law and motion activity, U.S. Magistrate Judge Dennis L. Beck issued November 27, 2012 findings and recommendations (“f and r’s”) to certify the following class

Meal Break Subclass:

All persons who work or worked as a non-exempt, hourly-paid employee at a corporate-owned Taco Bell restaurant in California from September 7, 2003, until the resolution of this lawsuit who worked for a period of time in excess of six hours and who worked for periods longer than five hours without a meal period of not less than thirty minutes as reflected in Defendants’ employees’ time records.

The parties filed lengthy objections to the f and r’s to further address the merits of class certification. This Court carefully considered the parties’ objections and carefully reviewed *de novo* the record and f and r’s. This Court’s January 2, 2013 order (“January 2 order”) adopted the f and r’s and found that the f and r’s “adequately address concerns of defendants” and “correctly analyzed the proposed classes to result in recommendation of only the late break class.”

1 On January 16, 2013, Taco Bell filed its papers to seek reconsideration of the January 2 order
2 and in turn certification of the late break class after two judges of this Court had comprehensively
3 reviewed and analyzed the record and parties' arguments. Taco Bell reargues for no less than a third
4 time that the late break class is unascertainable, that Taco Bell's break policy is not consistently applied
5 to late break class members, that a conflict exists among late break class members, and that the late
6 break class was improperly considered because it was not pled in plaintiffs' operative complaint.

7 DISCUSSION

8 A basic principle of federal practice is that courts generally refuse to reopen decided matters.
9 *Magnesystems, Inc. v. Nikken*, 933 F.Supp. 944, 948 (C.D. Cal. 1996). Reconsideration is an
10 "extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial
11 resources." *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003). A reconsideration motion "should
12 not be granted absent highly unusual circumstances." *McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th
13 Cir. 1999), *cert. denied*, 490 U.S. 1059, 109 S.Ct. 1972 (1989); *see Caldwell v. U.S.*, 391 F.3d 1226,
14 1235 (Fed. Cir. 2004) (reconsideration motions must be supported "by a showing of extraordinary
15 circumstances which justify relief").

16 A reconsideration motion "is not a vehicle for relitigating old issues, presenting the case under
17 new theories, securing a rehearing on the merits, or otherwise taking a 'second bite at the apple.'" *See*
18 *Sequa Corp. v. GBJ Corp.*, 156 F.3d 136, 144 (2nd Cir. 1998). "A party seeking reconsideration must
19 show more than a disagreement with the Court's decision, and recapitulation of the cases and arguments
20 considered by the court before rendering its original decision fails to carry the moving party's burden."
21 *United States v. Westlands Water Dist.*, 134 F.Supp.2d 1111, 1131 (E.D. Cal. 2001) (internal citations
22 omitted). "To succeed, a party must set forth facts or law of a strongly convincing nature to induce the
23 court to reverse its prior decision." *Westlands Water*, 134 F.Supp.2d at 1131.

24 Reconsideration is appropriate if the district court: (1) is presented with newly discovered
25 evidence; (2) has committed clear error or the initial decision was manifestly unjust; or (3) is presented
26 with an intervening change in controlling law. *School District 1J, Multnomah County v. ACandS, Inc.*,
27 5 F.3d 1255, 1263 (9th Cir. 1993), *cert. denied*, 512 U.S. 1236, 114 S.Ct. 2742 (1994). There may be
28 other highly unusual circumstances warranting reconsideration. *School District 1J*, 5 F.3d at 1263.

