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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SANDRIKA MEDLOCK, et al.,
Plaintiffs,
v.
TACO BELL CORP., et al.,
Defendants.

Case No. 1:07-cv-01314-SAB
ORDER GRANTING MOTIONS TO
COMPEL
ECF NO. 395, 396, 397

On April 22, 2014, Defendants Taco Bell Corp. and Taco Bell of America, Inc. (“Defendants”) filed three motions to compel the depositions of Plaintiffs Lisa Hardiman, Sandrika Medlock and Miriam Leyva. (ECF Nos. 395, 396, 397.)

The hearing on Defendants’ motion took place on May 21, 2014. Matthew Theriault appeared in person on behalf of Plaintiffs. Tracy Kennedy and Morgan Forsey appeared in person on behalf of Defendants. Jerusalem F. Beligan (Plaintiffs), Monica Balderrama (Plaintiffs), Patrick Clifford (Plaintiffs) and Nora K. Stiles (Defendants) also appeared via telephone. For the reasons set forth below, the Court will grant the motions to compel.

I.

BACKGROUND

In these consolidated actions, Plaintiffs assert class claims against Defendants arising from the alleged violations of California’s Labor Code relating to the payment of minimum

1 wages and overtime and the provision of meal and rest breaks. The operative complaint is the
2 First Amended Consolidated Complaint filed on May 17, 2011. (ECF No. 230.)

3 Discovery in this matter was bifurcated to permit the parties to initially conduct discovery
4 limited to class certification issues and then, after a class had been certified, to conduct discovery
5 regarding the merits of Plaintiffs' claims. (See Scheduling Conference Order, Jul. 2, 2008.)
6 Class certification discovery was scheduled to end on June 24, 2010. (Scheduling Conference
7 Order 20:9-10, Jun. 29, 2009.)

8 The class certification phase continued until January 2, 2013, when the Court certified the
9 following class:

10 Meal Break Subclass:

11 All persons who work or worked as a non-exempt, hourly-paid
12 employee at a corporate-owned Taco Bell restaurant in California
13 from September 7, 2003, until the resolution of this lawsuit who
14 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.

15 (Order to Adopt Findings and Recommendations on Class Certification, 1:18-21, Jan. 2, 2013.)

16 The parties then engaged in protracted litigation regarding the technicalities regarding the
17 delivery of notice to the class. On December 9, 2013, the parties submitted a stipulation
18 regarding the content of the class notice, which the Court approved on December 10, 2013.
19 (ECF Nos. 387, 389.)

20 On January 9, 2014 a scheduling conference was held and the merits discovery phrase
21 commenced thereafter. (ECF Nos. 391, 392.) Since then, the parties sought and obtained several
22 continuances of further scheduling conferences in order to mediate their claims.

23 On January 16, 2014, Defendants noticed the depositions of Sandrika Medlock and Lisa
24 Hardiman. On February 11, 2014, Plaintiffs served objections to the depositions, on the grounds
25 that depositions of these individuals had already been taken, additional depositions would be
26 cumulative, burdensome and harassing, and the depositions were not scheduled for a convenient
27 time or place for Plaintiffs. The parties have since met and conferred regarding their disputes
28 over the depositions.

1 **II.**

2 **DISCUSSION**

3 **A. Motion to Compel Deposition of Miriam Leyva**

4 As an initial matter, the Court notes that Defendants filed a motion to compel the
5 deposition of Plaintiff Miriam Leyva. However, there has been no joint statement filed regarding
6 the motion to compel the deposition of Miriam Leyva. The parties informed the Court via e-mail
7 that they wish to take the motion to compel Ms. Leyva's deposition off the Court's calendar.
8 Accordingly, the motion will be denied as moot.

9 **B. Motion to Compel Depositions of Sandrika Medlock and Lisa Hardiman**

10 The parties dispute whether an additional deposition of Sandrika Medlock or Lisa
11 Hardiman is appropriate. Under Federal Rule of Civil Procedure 30(a):

12 **(a) When a Deposition May Be Taken:**

- 13 ...
14 **(2) *With Leave.*** A party must obtain leave of court, and the
15 court must grant leave to the extent consistent with Rule 26(b)(2):
(A) if the parties have not stipulated to the deposition and:
...
(ii) the deponent has already been deposed in the case; ...

16 Further, Federal Rule of Civil Procedure 30(d) limits the duration of any deposition:

17 **(d) Duration; Sanction; Motion to Terminate or Limit.**

- 18 **(1) *Duration.*** Unless otherwise stipulated or ordered by
19 the court, a deposition is limited to 1 day of 7 hours. The court
20 must allow additional time consistent with Rule 26(b)(2) if needed
to fairly examine the deponent or if the deponent, another person,
or any other circumstance impedes or delays the examination.

21 Rule 26(b)(2) states:

22 **(b) Discovery Scope and Limits.**

23 **(2) *Limitations on Frequency and Extent.***

- 24 **(A) *When Permitted.*** By order, the court may alter the limits in
25 these rules on the number of depositions and interrogatories or on
the length of depositions under Rule 30. By order or local rule, the
court may also limit the number of requests under Rule 36.

26 ...
(C) *When Required.* On motion or on its own, the court must
27 limit the frequency or extent of discovery otherwise allowed by
these rules or by local rule if it determines that:

- 28 **(i)** the discovery sought is unreasonably cumulative or
duplicative, or can be obtained from some other source that is more
convenient, less burdensome, or less expensive;

- 1 (ii) the party seeking discovery has had ample opportunity to
2 obtain the information by discovery in the action; or
3 (iii) the burden or expense of the proposed discovery outweighs
4 its likely benefit, considering the needs of the case, the amount in
controversy, the parties' resources, the importance of the issues at
stake in the action, and the importance of the discovery in
resolving the issues.

5 Sandrika Medlock was previously deposed on April 2, 2008 for six hours and 41 minutes.
6 Lisa Hardiman was previously deposed on two occasions, first on June 3, 2008 then again on
7 April 13, 2010 for a cumulative total of time of approximately six hours and 35 minutes.
8 Defendants were willing to limit the duration of the requested depositions to three hours.

9 Pursuant to Rule 30(a)(2), Defendants must seek leave of Court to conduct these
10 depositions in the absence of Plaintiffs' consent.

11 Defendants seek to conduct more than one deposition of Sandrika Medlock and Lisa
12 Hardiman because discovery was bifurcated in this action and the first deposition would have
13 been limited to issues pertaining to class certification. Plaintiffs oppose the request on the
14 ground that Plaintiffs allowed the first deposition to cover topics pertaining to the merits of
15 Plaintiffs' claims and not just topics related to class certification. During the first depositions,
16 Plaintiffs objected once regarding the scope of the deposition going too far into merits issues, but
17 allowed the witness to answer when Defendants contended that the inquiry was relevant to
18 certification issues regarding adequacy and typicality.

19 The Court is inclined to grant more than one deposition of the same witness in light of the
20 bifurcation of discovery. First, the Court acknowledges that there is no clear-cut division
21 between discovery which relates to class certification and discovery which relates to the merits
22 of Plaintiffs' claims. There is substantial overlap between the two issues, which both parties
23 agree, as class certification involves questions of commonality, typicality and adequacy of
24 representation, Federal Rule of Civil Procedure 23(a); Hanlon v. Chrysler Corp., 150 F.3d 1011,
25 1019 (9th Cir. 1998), and those issues in turn resolved by looking at facts which also relate to the
26 underlying merits of Plaintiffs' claims. For example, commonality must be determined by
27 analyzing whether there are questions of fact and law which are common to the class. Hanlon,
28 150 F.3d at 1019. Discovery on this issue would necessarily involve investigation of the facts of

1 the case, which would also be considered “merits” discovery. Discovery on the issue of
2 typicality requires investigation of whether the claims and defenses of the representative parties
3 are typical of the claims and defenses of the class, Hanlon, 150 F.3d at 1020, which, again,
4 would involve substantial overlap with so-called “merits” discovery.

5 Plaintiffs also argue that they permitted Defendants to delve into merits issues during the
6 prior depositions. However, there is no suggestion that this allowance was ever explicitly
7 conveyed to Defendants. Therefore, it is unclear whether Defendants were aware that they could
8 inquire into any and all issues during the prior depositions. Given the substantial overlap
9 between class certification discovery and merits discovery, it may be that Defendants only
10 inquired into merits issues that could arguably be linked to class certification issues while
11 reserving inquiries regarding merits issues that had no arguable relevance to class certification
12 for a later deposition. Thus, the fact that Plaintiffs now say in hindsight that they would have
13 allowed Defendants to ask merits-based questions at the prior deposition is no help to Defendants
14 now if they were unaware that they had this permission.

15 Defendants also contend that additional depositions are warranted because, at the time the
16 prior depositions were taken, Plaintiffs had not yet asserted a claim based upon Plaintiffs’ “late”
17 meal break theory. Plaintiffs dispute Defendants’ contention that they were not aware of the
18 “late” meal break theory. In light of the Court’s analysis above, whether Defendants were aware
19 of the meal break theory is immaterial. Defendants have demonstrated good cause to permit
20 multiple depositions in light of the fact the discovery was bifurcated and Defendants reasonably
21 anticipated that they would be able to conduct depositions of the same person during the class
22 certification discovery phase as well as the merits discovery phase.

23 Defendants must also demonstrate good cause to depose the same person for more than
24 seven hours. The fact that the proceedings were bifurcated does not in itself justify an extension
25 of the total cumulative time that a single person should be deposed. In other words, while
26 Defendants have demonstrated good cause to conduct multiple, if Defendants seek to depose
27 each witness longer than seven hours, Defendants must demonstrate good cause to do so.

28 The party seeking an extension of time beyond seven hours bears the burden of

1 demonstrating good cause to justify such an extension. See Thomas-Young v. Sutter Central
2 Valley Hospitals, No. 1:12-cv-01410-AWI-SKO, 2013 WL 3054167, at *2 (E.D. Cal. Jun. 17,
3 2013); see also Fed. R. Civ. P. 30 advisory committee’s note (“The party seeking a court order to
4 extend the examination, or otherwise alter the limitations, is expected to show good cause to
5 justify such an order.”). “Considerations relevant to granting an extension include events
6 occurring over a long period of time, the need fully to explore the theories upon which the
7 witness relies, or, in multi-party cases, the need for each party to examine the witness with the
8 understanding that duplicative questioning is to be avoided.” Id. (internal quotations and
9 citations omitted).

10 Defendants justify the need for extra time by citing the extensive number of time records
11 at issue in this case. For example, the witnesses would potentially be asked questions regarding
12 a large number of workdays where the time records may indicate that they were not given
13 breaks, paid overtime, etc. Accordingly, the Court will grant Defendants leave to conduct an
14 additional 2.5 hours of deposition for each witness beyond the seven hour limit.

15 **III.**

16 **CONCLUSION AND ORDER**

17 Based upon the foregoing, it is HEREBY ORDERED that:

- 18 1. Defendants’ motion to compel the deposition of Miriam Leyva is DENIED as
19 moot (ECF No. 397);
- 20 2. Defendants’ motions to compel the depositions of Lisa Hardiman and Sandrika
21 Medlock are GRANTED (ECF Nos. 395, 396). Defendants are granted leave to
22 conduct additional depositions of Lisa Hardiman and Sandrika Medlock for an
23 additional 2.5 hours beyond the seven hours as to each.

24
25 IT IS SO ORDERED.

26 Dated: May 22, 2014

27 
28 UNITED STATES MAGISTRATE JUDGE