

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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 DENYING PLAINTIFFS’ MOTION  
FOR RECONSIDERATION  
ECF NO. 493

On October 8, 2014, Plaintiffs in this matter filed a motion for reconsideration of the Court’s August 29, 2014 order denying Plaintiffs’ prior motion for summary judgment. (ECF No. 493.) Matthew Theriault and Glenn Danas appeared in person on behalf of Plaintiffs. Tracey Kennedy appeared in person on behalf of Defendants.

For the reasons set forth below, the Court denies Plaintiffs’ motion for reconsideration.

**I.**

**BACKGROUND**

In these consolidated actions, Plaintiffs asserted claims against Defendants arising from alleged violations of California’s Labor Code relating to the payment of minimum wages, the payment of overtime wages and the provision of meal and rest breaks. Plaintiffs also asserted claims under California’s Private Attorney Generals Act (“PAGA”), which authorizes “aggrieved employees, acting as private attorneys general, to recover civil penalties for Labor

1 Code violations...” Arias v. Superior Court, 46 Cal. 4th 969, 980 (2009). The operative  
2 complaint is the Second Amended Consolidated Complaint filed on June 11, 2014. (ECF No.  
3 423.)

4 On June 11, 2014, Plaintiff filed a motion for summary judgment. (ECF No. 424.)  
5 Plaintiffs sought summary judgment on the theory that there was no genuine dispute of material  
6 fact regarding the issue of liability and that the only issue that should be resolved by a trial was  
7 the issue of damages. The Court denied Plaintiffs’ motion for summary judgment on August 29,  
8 2014. (ECF No. 486.) Plaintiffs now seek reconsideration of the Court’s order.

9 **II.**

10 **LEGAL STANDARDS FOR MOTIONS FOR RECONSIDERATION**

11 Local Rule 230(j) states:

12 **(j) Applications for Reconsideration.** Whenever any motion  
13 has been granted or denied in whole or in part, and a subsequent  
14 motion for reconsideration is made upon the same or any alleged  
15 different set of facts, counsel shall present to the Judge or  
16 Magistrate Judge to whom such subsequent motion is made an  
17 affidavit or brief, as appropriate, setting forth the material facts and  
18 circumstances surrounding each motion for which reconsideration  
19 is sought, including:

- 20 (1) when and to what Judge or Magistrate Judge the prior  
21 motion was made;  
22 (2) what ruling, decision, or order was made thereon;  
23 (3) what new or different facts or circumstances are claimed to  
24 exist which did not exist or were not shown upon such prior  
25 motion, or what other grounds exist for the motion; and  
26 (4) why the facts or circumstances were not shown at the time  
27 of the prior motion.  
28

21 **III.**

22 **DISCUSSION**

23 Plaintiffs argue that reconsideration is warranted due to “clear error” by the Court in  
24 denying Plaintiffs’ motion for summary judgment. For the reasons set forth below, the Court  
25 denies Plaintiffs’ motion for reconsideration.

26 ///

27 ///

28 ///

1           **A.     The Court Properly Found that the Meal Break Policy Documents Were Not**  
2           **Authenticated**

3           In denying Plaintiffs’ motion for summary judgment, the Court found that the documents  
4 presented by Plaintiffs purportedly describing Defendant’s meal break policy were not  
5 authenticated. Plaintiffs argue that the document was sufficiently authenticated.

6           “Authentication is a ‘condition precedent to admissibility,’ and this condition is satisfied  
7 by ‘evidence sufficient to support a finding that the matter in question is what its proponent  
8 claims.’” Orr v. Bank of America, NT & SA, 285 F.3d 764, 773 (9th Cir. 2002) (citing Fed. R.  
9 Evid. 901(a)). “In a summary judgment motion, documents authenticated through personal  
10 knowledge must be ‘attached to an affidavit that meets the requirements of [Fed.R.Civ.P.] 56(e)  
11 and the affiant must be a person through whom the exhibits could be admitted into evidence.’”  
12 Id. (citing Canada v. Blain’s Helicopters, Inc., 831 F.2d 920, 925 (9th Cir. 1987)).

13           The documents at issue are entitled “Rest Break and Meal Periods and “Required Rest  
14 Break and Meal Period Matrix” and were attached as Exhibits B and C to the Declaration of  
15 Matthew T. Theriault in Support of Motion for Partial Summary Judgment (“Theriault Decl.”).  
16 (See ECF No. 424.) Mr. Theriault’s declaration stated:

17           In response to Plaintiffs’ request for production, Taco Bell  
18 produced, among other things, a copy of its “Rest Break and Meal  
19 Periods” policy, authenticated by Taco Bell’s designees and its  
20 counsel as Taco Bell’s meal period policy/practices, as described  
21 above and during the class certification proceedings. A true and  
22 correct copy of the “Rest Break and Meal Periods” policy is  
attached hereto as Exhibit B. It states in relevant part “Meal  
Periods > you are required to take a full 30-minute, uninterrupted,  
meal period after 5 hours of work unless 6 hours completes your  
work day.”

23 (Theriault Decl. ¶ 3.) There are several defects with Mr. Theriault’s attempt to authenticate the  
24 documents in question.

25           Plaintiffs argue that the documents were properly authenticated because “Defendants’  
26 already authenticated at least one of the meal period policy documents in their opposition to  
27 Plaintiffs’ motion for class certification.” Plaintiffs argue that the same documents were attached  
28 to a declaration submitted by Defendants earlier in this action in an opposition to Plaintiff’s

1 motion for class certification. However, the documents do not appear to have been properly  
2 authenticated by Defendants, as the documents were attached as exhibits to the declaration of  
3 Tracey Kennedy and Ms. Kennedy did not establish a foundation establishing herself as a person  
4 through whom the documents could be admitted into evidence. There is no indication that Ms.  
5 Kennedy had personal knowledge of facts establishing the documents' authenticity.

6 Furthermore, it remains unclear what these documents are (i.e., whether they represented  
7 the "official" meal policy enforced by Defendant, or merely a draft document uncovered during  
8 discovery), who received these documents (i.e., was the document distributed to all managers, or  
9 was it buried in a file that never saw the light of day?), or whether the documents accurately  
10 reflected the "official" meal policy (i.e., was the reference to meal breaks given after five hours  
11 of work a typographical error that was contradicted by other written materials?). Plaintiffs, at a  
12 minimum, have only established that the documents at issue are documents that were in  
13 Defendant's possession. Plaintiffs did not submit any evidence of the significance of these  
14 documents. As noted in the Court's order, Plaintiffs never presented these meal break policy  
15 documents to an appropriate witness and asked the witness to confirm that these documents  
16 accurately reflect Defendant's policy regarding the timing of meal breaks. Accordingly,  
17 Plaintiffs, at most, have established that some unidentified document in Defendant's possession  
18 indicates that the official policy may be to give employees meal breaks after five hours of work.

19 Based upon the foregoing, the Court finds that reconsideration is not warranted with  
20 respect to the Court's findings regarding the authenticity of the documents submitted by  
21 Plaintiffs.

22 **B. The Court Properly Found that Summary Judgment was not Appropriate**  
23 **With Respect to Liability**

24 Plaintiffs argue that the Court improperly denied summary judgment with respect to  
25 liability because liability can be premised upon a uniform policy. Plaintiffs misinterpret the  
26 Court's order denying their motion for summary judgment.

27 As an initial matter, Plaintiffs argue that the Court violated the "law of the case" doctrine  
28 in its prior order by departing from a legal issue decided previously in this case. During class

1 certification proceedings, the Court acknowledged that, per Brinker Restaurant Corp. v. Superior  
2 Court, 54 Cal. 4th 1004 (2012), liability may be premised upon an official policy adopted by an  
3 employer which violates California wage and hour laws. Nothing in the Court’s prior order was  
4 inconsistent with this position. In the Court’s prior order, the Court noted that Plaintiffs must  
5 demonstrate that at least some employees were actually denied timely meal breaks as a result of  
6 the allegedly violative policy. For example, hypothetically, if an employee were to prove that an  
7 employer adopted an official policy where meal breaks would not be given until after five hours  
8 of work, but the employer’s time records showed that every shift worked by every employee was  
9 less than four hours long, no liability would exist because no employee was denied a timely meal  
10 break because no employee worked a shift long enough to trigger the legal obligation to provide  
11 a meal break. Stated differently, no employee would have standing to sue because no employee  
12 suffered any injury under this hypothetical scenario. Accordingly, in order to establish liability,  
13 Plaintiffs must establish injury—i.e., an actual instance of an untimely meal break. Plaintiffs’  
14 prior motion for summary judgment failed to establish liability in this manner.

15 More fundamentally, even if the Court were to look past the authentication issues and the  
16 actual injury issues, Plaintiffs’ motion for summary judgment failed because Plaintiffs failed to  
17 demonstrate an absence of dispute regarding the material facts relating to Defendants’ meal  
18 break policy. For reasons discussed in more detail in the Court’s contemporaneous order on  
19 Plaintiffs’ second motion to dismiss, the evidentiary record includes conflicting evidence from  
20 Plaintiffs and Defendants regarding whether it was, in fact, Defendants’ official, uniformly  
21 applied policy to provide meal breaks after the fifth hour of work. Plaintiffs, at most, established  
22 that there exists a document in Defendant’s possession that could be interpreted to say that meal  
23 periods are given after five hours of work. Plaintiffs submitted little evidence that this document  
24 accurately reflected Defendant’s official policy regarding the timing of meal breaks. Plaintiffs  
25 submitted little evidence that this policy was uniformly enforced on all employees. Plaintiffs  
26 submitted little to no evidence that any employee was given a late meal break because of this  
27 policy.

28 ///

1 Plaintiffs cite a number of cases that have held that class-wide liability may attach if an  
2 employer adopts a uniform policy which violates a provision of wage and hour laws. While it is  
3 true that class-wide liability may be based upon the adoption of a uniform policy, summary  
4 judgment requires Plaintiffs to demonstrate that there is no genuine dispute that this uniform  
5 policy existed and was uniformly applied against employees. The Court's reading of the record  
6 revealed substantial grounds for genuine dispute.

7 Based upon the foregoing, the Court finds that reconsideration is not warranted with  
8 respect to the Court's findings regarding liability.

9 **IV.**

10 **CONCLUSION AND ORDER**

11 Based upon the foregoing, the Court finds that reconsideration of the Court's order  
12 denying Plaintiffs' motion for summary judgment is not warranted.

13 Accordingly, it is HEREBY ORDERED that Plaintiffs' motion for reconsideration is  
14 DENIED.

15 IT IS SO ORDERED.

16 Dated: November 14, 2014



UNITED STATES MAGISTRATE JUDGE