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6 **UNITED STATES DISTRICT COURT**
7 **NORTHERN DISTRICT OF CALIFORNIA**
8 **SAN FRANCISCO DIVISION**

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10 FRANCIE E. MOELLER, EDWARD MUEGGE,
11 KATHERINE CORBETT, and CRAIG THOMAS
12 YATES,

13 Plaintiffs,

14 v.

15 TACO BELL CORP.,

16 Defendant.

Case No. 02-cv-05849 PJH (NC)

**SUPPLEMENTAL ORDER RE:
CLASS DEPOSITIONS**

Re: Docket Nos. 659, 664

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18 This order supplements the Court's December 7, 2011, order regarding discovery. That
19 order permitted Taco Bell to take up to thirty-five depositions of class members by February 15,
20 2012. Dkt. No. 659. Taco Bell has taken fourteen depositions to date, so what remains of this
21 portion of the discovery is the scheduling of twenty-one depositions. Dkt. No. 664 at 1-2. The
22 Court held a discovery status conference regarding the scheduling of depositions on January 11,
23 2012. Dkt. No. 663. Yesterday, at the Court's request, Plaintiffs filed a further status report
24 concerning the depositions. Dkt. No. 664. This order addresses issues raised in the status
25 conference and status report.

26 As detailed in Plaintiffs' chart of scheduled depositions, Dkt. No. 64 at 5-7, the parties
27 have scheduled nineteen depositions. Plaintiffs have offered three class members as alternate
28 deponents for the remaining two depositions Taco Bell is permitted to take: George Partida,

1 Brian Schreifels, and Allan Zimmerman. *Id.* at 6.

2 Taco Bell insists on deposing class members Jaye Fortune, Gladys Lovelace, Brenda
3 Willhide, and Annie Miller. *Id.* at 3. These class members, however, are unavailable to be
4 deposed before the February 15 deadline. *Id.* at 2. Taco Bell’s counsel demanded on January 18,
5 2012, that Plaintiffs remove these four class members from the class if they are unavailable to be
6 deposed. *Id.* at 8. Taco Bell’s effort to condition the scheduling of the remaining depositions on
7 the removal of these four class members from the class is inappropriate, as it is for the District
8 Court to determine whether Fortune, Lovelace, Willhide, and Miller should be able to participate
9 in any class recovery in this case.

10 Accordingly, the Court finds that Plaintiffs’ proffer of nineteen scheduled deponents and
11 three alternate deponents is sufficient. By January 20, 2012, at 5:00 p.m., Taco Bell must notify
12 Plaintiffs’ counsel in writing as to which two of the three alternate deponents referenced above, if
13 any, it wishes to depose. The deposition and briefing deadlines remain unchanged.

14 Additionally, by January 27, 2012, the parties must file jointly in ECF a further status
15 report concerning the scheduling of depositions. In that report, and in any future submissions to
16 this Court, each party must refrain from including any of its own “conclusions” regarding the
17 possible motivations of its opponent. *See, e.g.*, Dkt. No. 664 ¶ 2 (“Based on the following, it is
18 Plaintiffs’ reluctant conclusion that TBC is more interested in delay than depositions.”). The
19 parties are ordered to stick to the facts.

20 IT IS SO ORDERED.

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22 DATED: January 19, 2012

23 
24 NATHANAEL M. COUSINS
25 United States Magistrate Judge
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