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3 IN THE UNITED STATES DISTRICT COURT
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA

5 ROBERT MENDEZ, et al.,

No. C 11-2478 CW

6 Plaintiffs,

ORDER DENYING

MOTION FOR

7 v.

CERTIFICATION OF

INTERLOCUTORY

8 R+L CARRIERS, INC.; R&L CARRIERS
9 SHARED SERVICES, LLC, et al.,

APPEAL (Docket No.
68)

10 Defendants.

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United States District Court
For the Northern District of California

On January 8, 2013, Defendants R+L Carriers, Inc. and R+L Carriers Shared Services, LLC moved for certification of an interlocutory appeal of this Court's order denying their motion for partial summary judgment. Plaintiffs Robert Mendez and Randy Martinez oppose the motion. Having considered all of the parties' submissions, the Court denies Defendants' motion.

LEGAL STANDARD

Pursuant to 28 U.S.C. § 1292(b), a district court may certify an appeal of an interlocutory order only if three factors are present. First, the issue to be certified must be a "controlling question of law." 28 U.S.C. § 1292(b). Establishing that a question of law is controlling requires a showing that the "resolution of the issue on appeal could materially affect the outcome of litigation in the district court." In re Cement Antitrust Litig., 673 F.2d 1020, 1026 (9th Cir. 1982) (citing U.S. Rubber Co. v. Wright, 359 F.2d 784, 785 (9th Cir. 1966)).

1 Second, there must be "substantial ground for difference of
2 opinion" on the issue. 28 U.S.C. § 1292(b). This is not
3 established by a party's strong disagreement with the court's
4 ruling; the party seeking an appeal must make some greater
5 showing. Mateo v. M/S Kiso, 805 F. Supp. 792, 800 (N.D. Cal.
6 1992).

7 Third, it must be likely that an interlocutory appeal will
8 "materially advance the ultimate termination of the litigation."
9 28 U.S.C. § 1292(b); Mateo, 805 F. Supp. at 800. Whether an
10 appeal may materially advance termination of the litigation is
11 linked to whether an issue of law is "controlling" in that the
12 court should consider the effect of a reversal on the management
13 of the case. Id. In light of the legislative policy underlying
14 § 1292, an interlocutory appeal should be certified only when
15 doing so "would avoid protracted and expensive litigation." In re
16 Cement, 673 F.2d at 1026; Mateo, 805 F. Supp. at 800. If, in
17 contrast, an interlocutory appeal would delay resolution of the
18 litigation, it should not be certified. See Shurance v. Planning
19 Control Int'l, Inc., 839 F.2d 1347, 1348 (9th Cir. 1988) (refusing
20 to hear a certified appeal in part because the Ninth Circuit's
21 decision might come after the scheduled trial date).

22 "Section 1292(b) is a departure from the normal rule that
23 only final judgments are appealable, and therefore must be
24 construed narrowly." James v. Price Stern Sloan, Inc., 283 F.3d
25 1064, 1068 n.6 (9th Cir. 2002). Thus, the court should apply the
26 statute's requirements strictly, and should grant a motion for
27 certification only when exceptional circumstances warrant it.
28 Coopers & Lybrand v. Livesay, 437 U.S. 463, 475 (1978). The party

1 seeking certification of an interlocutory order has the burden of
2 establishing the existence of such exceptional circumstances. Id.
3 A court has substantial discretion in deciding whether to grant a
4 party's motion for certification. Brown v. Oneonta, 916 F. Supp.
5 176, 180 (N.D.N.Y. 1996) rev'd in part on other grounds, 106 F.3d
6 1125 (2d. Cir. 1997).

7 DISCUSSION

8 Defendants have failed to demonstrate that an interlocutory
9 appeal would "materially advance the ultimate termination of the
10 litigation." 28 U.S.C. § 1292(b). They seek leave to appeal the
11 Court's November 19, 2012 order denying their motion for summary
12 judgment on Plaintiffs' meal and rest break claims. See Docket
13 No. 67. That order did not address Plaintiffs' other claims --
14 including numerous claims under the California Labor Code --
15 because Defendants did not move for summary judgment on any of
16 those claims. Thus, even if Defendants were granted leave to
17 appeal the summary judgment order, the appeal would not materially
18 affect Plaintiffs' remaining claims. Instead, it would merely
19 delay the ultimate resolution of this case.

20 CONCLUSION


21 For the reasons set forth above, the motion for certification
22 of interlocutory appeal (Docket No. 68) is DENIED.

23 A case management conference is currently scheduled for March
24 14, 2013. The Court notes that the parties have not filed a joint
25 case management statement. The parties should be prepared to
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1 discuss scheduling matters and set future dates at the case
2 management conference.

3 IT IS SO ORDERED.

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5 Dated: 3/13/2013


CLAUDIA WILKEN
United States District Judge

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