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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 RICK FRIERI, on behalf of himself and  
12 all others similarly situated, and on behalf  
13 of the general public,

14 Plaintiff,

15 v.

16 SYSCO CORPORATION; SYSCO SAN  
17 DIEGO, INC.; AND DOES 1-100,

18 Defendants.  
19

Case No.: 3:16-cv-01432-JLS-NLS

**ORDER ON JOINT MOTION FOR  
DETERMINATION OF DISCOVERY  
DISPUTE NO. 3**

[ECF No. 48]

20 Before the Court is the parties' Joint Motion for Determination of Discovery  
21 Dispute No. 3. ECF No. 48. Having considered the arguments presented by both parties  
22 and for the reasons set forth herein and as detailed below, the Court **GRANTS IN PART**  
23 and **DENIES IN PART** the Plaintiff's motion to compel further responses to questions  
24 posed in deposition.

25 **I. DISCOVERY DISPUTE**

26 The parties and the Court have extensive familiarity with the factual and  
27 procedural background of this case. Relevant to this dispute, the case presents a putative  
28 class action of truck drivers for alleged wage and hour violations while employed as

1 drivers for defendants Sysco San Diego, Inc. and/or Sysco Corporation. *See* ECF No. 15.  
2 Following a lengthy class discovery period, eight months total, during which the parties  
3 were unable to coordinate deposition dates, the parties moved for and were granted leave  
4 to conduct three depositions—(1) Plaintiff, (2) 30(b)(6) representative of Sysco San  
5 Diego, and (3) 30(b)(6) representative of Sysco Corporation—after the class discovery  
6 cut-off. ECF No. 42. The dispute before the Court arises from questions posed at the  
7 deposition of the 30(b)(6) representative of Sysco San Diego, Mr. John Petrossian. ECF  
8 No. 48.

9 During the deposition of Mr. Petrossian, counsel for Plaintiff inquired about the  
10 number of non-driver employees employed by Sysco San Diego. ECF No. 48 at 1.  
11 Counsel for the Defendants instructed the witness not to answer on the grounds that the  
12 question exceeded the scope of the deposition notice.<sup>1</sup> *Id.*

13 Similarly, when questioned regarding emails and phone calls exchanged between  
14 Mr. Petrossian and the Vice President of Operations for the Pacific Market at Sysco  
15 Corporation, Scott McKay, to whom Mr. Petrossian reports, counsel for the Defendants  
16 also objected as beyond the scope of the deposition notice and overbroad.

17 The parties have agreed to the further deposition of Mr. Petrossian, but disagree as  
18 to the appropriate scope. Defendants argue that questioning should be limited to the  
19 questions the witness was instructed not to answer and immediate follow up questions.  
20 Plaintiff argues that his questioning was limited because it was clear that counsel would  
21 object, and so the entire lines of inquiry should be permitted.

## 22 II. DISCUSSION

### 23 A. Non Driver Employees

24 Central to that dispute and to Plaintiff's request for an extension, is the ability of  
25 Plaintiff to question Mr. Petrossian on the number of "non-driver" employees of Sysco  
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27  
28 <sup>1</sup> The parties did not provide a copy of the deposition notice to the Court for review.

1 San Diego—a category of potential class members which Plaintiff has **never** previously  
2 identified in connection with the pending action. Plaintiff’s first foray into this area of  
3 questioning occurs following the close of class discovery, at a deposition Plaintiff was  
4 granted leave to conduct beyond the discovery cut-off due to scheduling conflicts of the  
5 parties. Plaintiff may not re-open class discovery and fails to present good cause to do  
6 so. Plaintiff offers no basis for the relevance of this line of questioning, or its failure to  
7 inquire into non-driver employees at any prior point in the nine months discovery has  
8 been pending. “Taken together, [Federal] Rules [of Civil Procedure] 26(f), 30, and 37(a),  
9 along with Rule 16, ... vest the court with broad authority and discretion to control  
10 discovery, including the conduct of depositions.” *Hall v. Clifton Precision, a Div. of*  
11 *Litton Sys., Inc.*, 150 F.R.D. 525, 527 (E.D. Pa. 1993). Under the circumstances  
12 presented, the Court will exercise its discretion to limit questioning on this previously un-  
13 explored topic.

14 Plaintiff’s motion to compel is **DENIED IN PART** and **GRANTED IN PART**.  
15 Plaintiff may re-ask the question and any *specific* and *limited* follow up questions arising  
16 *directly* therefrom because the Court does find that defense counsel’s instruction not to  
17 answer was improper. *See Detoy v. City and County of San Francisco*, 196 F.R.D. 362,  
18 366-67 (N.D. Cal. 2000). However, Plaintiff’s lack of diligence in the pursuit of  
19 discovery as to any non-drivers precludes any further questioning as to non-driver  
20 employees of Sysco San Diego as an improper attempt to re-open discovery and  
21 disproportionate to the needs of the case. Fed. R. Civ. P. 26; *Johnson v. Mammoth*  
22 *Recreations*, 975 F.2d 604, 609 (9th Cir. 1992); *see also*, Fed. R. Civ. P. 30(d)(3)(B);  
23 *Detoy v. City and County of San Francisco*, 196 F.R.D. at 366 (“A party may instruct a  
24 deponent not to answer ... to enforce a limitation on evidence directed by the court.”)

### 25 **B. Communications with Sysco Corporation**

26 Defendants argue that the “relationship between Sysco San Diego and Sysco  
27 Corporation is a subject matter in Plaintiff’s deposition notice of the Sysco Corporation  
28 PMK,” rendering further inquiry into Mr. Petrossian’s communications with Sysco

1 Corporation representatives improper as beyond the scope of his deposition notice and  
2 converting his deposition to that of an individual percipient witness. ECF No. 48 at 10.

3 The court in *Detoy v. City and County of San Francisco*, addressed similar  
4 concerns and noted that:

5 The option to adjourn the 30(b)(6) deposition and demand that  
6 the deposition be re-noticed, for the witness to appear on his or  
7 her own behalf seems artificial and wasteful of both the parties'  
8 resources and the witness's time. Presumably, if the witness is  
9 capable of testifying on behalf of the designated entity, the  
10 witness is also capable of testifying as an individual, at the  
11 same deposition. Nor should one witness count as two  
12 depositions for purposes of the Local Rules' limit on the  
13 number of depositions to be taken by each party. Such a rule  
14 would encourage defending counsel to take a hard line and  
15 force an opponent to expend its deposition allotment. [¶] If  
16 Defendants have objections to either questions outside the  
17 scope of the 30(b)(6) designation or a question whether certain  
18 conduct falls inside or outside Departmental policy, counsel  
19 shall state the objection on the record and the witness shall  
20 answer the question, to the best of the witness's ability. ...

21 *Detoy v. City and County of San Francisco*, 196 F.R.D. at 367.

22 The Court agrees with this analysis. The extent of Mr. Petrossian's  
23 communications with Mr. McKay, the Sysco Corporation VP to whom Mr. Petrossian  
24 reports, may be properly answered by Mr. Petrossian without re-noticing his deposition  
25 or converting it to an individual percipient deposition. However, because Plaintiff has  
26 noticed and identified the topic of relationship between Sysco San Diego and Sysco  
27 Corporation as a topic for the 30(b)(6) witness of the Sysco Corporation, the Court finds  
28 it appropriate to limit Mr. Petrossian's second deposition to the questions asked and any  
follow up questions arising directly therefrom.

### 29 **C. Sanctions**

30 The Court does not find that sanctions are warranted. Both parties appear to have  
31 been acting in good faith, and in particular, Defendants offered to re-produce Mr.

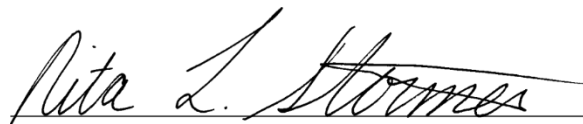
1 Petrossian at a time and location when all parties were scheduled to present and Plaintiff  
2 declined. Plaintiff's request for sanctions is **DENIED**.

3 **III. CONCLUSION**

4 Plaintiff is **GRANTED** leave to conduct Mr. Petrossian's second deposition. The  
5 deposition must be completed by **November 17, 2017**, may proceed for no more than **2**  
6 **hours** of on-the-record testimony, and the scope of questioning must be limited to the  
7 questions previously asked and follow up questions arising directly therefrom.

8 **IT IS SO ORDERED.**

9 Dated: November 9, 2017

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11 Hon. Nita L. Stormes  
12 United States Magistrate Judge  
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