

United States District Court,  
N.D. California.  
Francie E. MOELLER, Plaintiff,  
v.  
TACO BELL CORPORATION, et al., Defendants.  
**No. C 02-5849 PJH (JL).**

Dec. 11, 2008.

Timothy P. Fox, Amy F. Robertson, Ari Reuben Krichiver, Fox & Robertson, P.C., Denver, CO, Antonio Michael Lawson, Lawson Law Offices, Oakland, CA, Brad Seligman, Jocelyn Dion Larkin, Impact Fund, Mari Mayeda, Attorney at Law, Berkeley, CA, for Plaintiff.

Gregory F. Hurley, Richard Hidehito Hikida, Esq., Greenberg Traurig LLP, Irvine, CA, Thomas P. Howard, Louisville, CO, for Defendants.

Bob Evans, San Marcos, CA, pro se.

updating the Court on the new parameters of the motion. The Court heard argument and issued an order at Docket # 387, denying Plaintiffs' motion without prejudice pending a decision by the district court on dispositive motions. The motion was terminated from the court docket.

Plaintiffs immediately wrote a letter asking the Court to rule on their motion without waiting for the district court's ruling. The letter was stricken by court order at Docket # 391. The Court ruled that the dispute was not appropriate for resolution on letter briefs or by other expedited means and ordered the parties to file a formal noticed motion or motions. (Order e-filed at Docket # 391 at 1:19-21).

Plaintiffs filed a formal noticed motion at Docket # 392, but on a new topic: contention interrogatories. The matter was set for hearing, the Court heard argument and issued an order at Docket # 402 granting Plaintiffs' motion.

The district court then heard and decided Defendant's motion for partial summary judgment, denying it by an order e-filed at Docket # 416.

## **ORDER**

## **Relief Sought**

JAMES LARSON, United States Chief Magistrate Judge.

Plaintiffs ask this Court to rule on the merits of their February 15 motion, presumably because the district court has now ruled on Defendants' motion for partial summary judgment. Defendants oppose Plaintiffs' being permitted to renew their motion, and request an opportunity to update the Court:

### **Introduction**

\*1 The Court received the parties' Joint Statement, e-filed December 4, 2008 at Docket # 418: "Re: Plaintiffs' February 15, 2008 Motion to Compel." All discovery has been referred by the district court (Hon. Phyllis J. Hamilton) pursuant to 28 U.S.C. § 636(b).

If the Court is inclined to consider a renewed motion from plaintiffs, Taco Bell requests an opportunity to supplement its Memorandum of Points and Authorities in Support of Its Opposition to Plaintiffs' Motion to Compel (docket # 363) with declarations and supporting exhibits so that the current factual circumstances including the numerous recent site inspections conducted or to be conducted by plaintiffs' retained expert are made part of the record.

### **Procedural Background**

The motion the parties refer to in their statement was e-filed at Docket # 361, when the case was assigned for trial to Hon. Martin J. Jenkins. The hearing was vacated by order of the district court and the case was reassigned for all purposes including trial to Hon. Phyllis J. Hamilton, who referred discovery to the magistrate judge. The discovery motion was re-noticed and set for hearing. The parties filed a Joint Statement of Issues at Docket # 373,

Joint Statement at Docket # 418, note 5.

### **Conclusion and Order**

Plaintiffs are apparently ignoring this Court's previous order at Docket # 391, requiring a formal noticed motion, in order to renew their terminated motion formerly filed at Docket # 361. This order still stands. If Plaintiffs seek the Court's assistance with this discovery dispute, they must file a formal noticed motion. There have been changes in the case in the year since that initial filing-a new trial judge, a dispositive ruling, and extensive inspections and discovery, including other disputes. The factors which could decide the outcome of the motion are different now, as described by Defendants in their request to supplement their earlier briefing opposing Plaintiffs' motion. Any discovery dispute shall be presented to this Court, as ordered, in a formal noticed motion, on the normal briefing schedule.

**\*2 IT IS SO ORDERED.**