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

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10 GARY GEE, ROXANNE MAZARAKIS, JODY  
SOTO,

11 Plaintiffs,

12 v.

13 SUNTRUST MORTGAGE, INC.,

14 Defendant.

Case No. 10-cv-01509 RS (NC)

**ORDER DENYING MOTION TO  
COMPEL**

Re: Dkt. No. 115

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17 Suntrust moves to compel the three named plaintiffs and twenty-five opt-in plaintiffs  
18 who live in twenty-five different cities across the country to appear for depositions in San  
19 Francisco or in three other cities of its choice.<sup>1</sup> Suntrust argues that the deponents are required  
20 to appear in San Francisco, which is where this Fair Labor Standards Act (“FLSA”) putative  
21 class action was filed, because they have not established good cause for appearing elsewhere.  
22 As a compromise, Suntrust offers to take the depositions either in San Francisco or in three  
23 other cities it claims would be more convenient to the deponents. Plaintiffs oppose the motion,  
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25 <sup>1</sup> The three named plaintiffs are Gary Gee, Roxanne Mazarakis, and Jodi Soto. The  
26 twenty-five Opt-In plaintiffs are Marilyn Keith, Ellen Hancock, Emily Braun, BeLinda Goble,  
27 Carol Johnson, Bruce Cohen, Kimberly Keppley, Pamela Rodriguez, Carole Sienko, Diane  
28 Daniel, Karla Reich, Ronald Woods, Elizabeth Gonzalez-Kosel, Miriam McCallister, Brenda  
Tanner, Jane Thomas, Marilou Pearson, Michele Belk, Leslie Rose-Ryan, Kimberly Webster,  
Brenda Bruton-Bowman, Wendy Corbin, Michelle Littell, Kelly Dorr, and Julie Lanham. Ensor  
Decl., Ex. B.

1 arguing that traveling to any of the cities selected by Suntrust would be financially burdensome  
2 for them, and that requiring them to do so despite this burden would contradict the purpose of  
3 joining a collective action brought under the FLSA. Based on the papers submitted by the  
4 parties, the Court finds that the motion is appropriate for determination without oral argument.  
5 *See* Civil L.R. 7-1(b). Because the financial concerns expressed by Plaintiffs constitute good  
6 cause for excusing the deponents from traveling to the cities selected by Suntrust for the  
7 depositions, Suntrust’s motion is denied.

## 8 **I. BACKGROUND**

9 Plaintiffs allege that Suntrust failed to pay them overtime wages in violation of the  
10 FLSA, the California Labor Code, and California’s Unfair Competition Law. Dkt. No. 19. On  
11 February 18, 2011, the District Court granted Plaintiffs’ motion for conditional class  
12 certification for the purpose of providing notice to potential opt-in class members. Dkt. No. 54.  
13 A total of 117 current and former Suntrust employees opted into the collective action.

14 On August 19, 2011, Suntrust noticed the depositions of three named plaintiffs and  
15 twenty-five opt-in plaintiffs for the week of October 3, 2011 in San Francisco, California. Ensor  
16 Decl., Ex. B. Suntrust claims to have chosen San Francisco as the location of the depositions  
17 because that is where the action was filed. Dkt. No. 115 at 2. When Plaintiffs’ counsel objected  
18 to the location of the depositions as inconvenient to the proposed deponents, as they live in  
19 twenty-five different cities, Suntrust offered to take the depositions in four cities: San Francisco,  
20 California; Orlando, Florida; Charlotte, North Carolina; and Richmond, Virginia. *Id.* at 3; Ensor  
21 Decl, Ex. C. Plaintiffs rejected the offer and stated that if Suntrust could not conduct the  
22 depositions in the fourteen cities they consider to be the most convenient to the deponents, then  
23 it must conduct them via teleconference. Ensor Decl, Ex. C. Because the parties were unable to  
24 reach an agreement as to the location of the depositions, Suntrust filed this motion.

## 25 **II. STANDARD OF REVIEW**

26 The location of a deposition is initially selected by the party noticing the deposition.  
27 FED. R. CIV. P. 30(b)(1). In the event of a dispute between the parties as to the location of a  
28 deposition, the court may prescribe the time, place, and terms of the deposition “to protect a

1 party or person from annoyance, embarrassment, oppression, or undue burden or expense.”

2 FED. R. CIV. P. 26(c)(1).

### 3 III. DISCUSSION

4 Suntrust moves to compel three named plaintiffs and twenty-five opt-in plaintiffs to  
5 appear for depositions in San Francisco, which is the forum where the action was filed. Dkt.  
6 No. 115. Alternatively, Suntrust requests that each deposition take place in one of the following  
7 four cities: San Francisco, California; Orlando, Florida; Charlotte, North Carolina; and  
8 Richmond, Virginia. *Id.* at 7. Suntrust opposes conducting the depositions via telephone or  
9 videoconference, as doing so would deprive it of “its right to cross-examine the Plaintiffs face-  
10 to-face” and to “observe their demeanors.” *Id.* at 3.

11 Suntrust argues that the named Plaintiffs in any action are required to appear for  
12 depositions in the forum in which the suit was filed unless they show good cause for appearing  
13 elsewhere. *Id.* at 4-5. Suntrust further argues that opt-in plaintiffs in FLSA collective actions  
14 also are required to appear for depositions in the forum where the action was filed because they  
15 were aware of that location when they voluntarily joined the suit, and that the purpose of FLSA  
16 collective actions does not excuse deponents from this obligation. *Id.* at 5-6; Dkt. No. 124 at 3.

17 Plaintiffs oppose the motion, arguing that requiring the deponents to travel to the cities  
18 selected by Suntrust for their depositions would be unduly burdensome and expensive for them,  
19 which contradicts the purpose of joining a collective action brought under the FLSA. Dkt. No.  
20 121 at 1. Plaintiffs note that because the purpose of collective actions under the FLSA is to  
21 lower the costs for each plaintiff, several courts around the country have ruled that opt-in  
22 plaintiffs in FLSA collective actions are not required to appear for depositions in the forum  
23 where the action was filed when doing so would be financially burdensome for them. Dkt. No.  
24 121 at 5-7. Plaintiffs therefore request that the depositions take place in fourteen cities of their  
25 choice, which they argue are more convenient to the deponents.<sup>2</sup> *Id.* at 3.

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27 <sup>2</sup> The cities are Phoenix, Arizona; Folsom, California; San Diego, California; San  
28 Francisco, California; Daytona Beach, Florida; Orlando, Florida; Tampa, Florida; Charlotte,  
North Carolina; Raleigh, North Carolina; Nashville, Tennessee; Austin, Texas; Dallas, Texas;  
Alexandria, Virginia; and Richmond, Virginia. Helland Decl., Ex. 6.

1 Suntrust responds that the authority cited by Plaintiffs is distinguishable from this case  
2 and is therefore inapposite. Dkt. No. 124 at 3-5. It argues that when courts have excused  
3 plaintiffs in FLSA collective actions from appearing for depositions in the forum where the  
4 action was filed, they did so because one of the parties refused to compromise or the issues to be  
5 covered in the depositions were simple and did not require conducting the depositions in person,  
6 which is not the case here. Dkt. No. 124 at 4-5.

7 The Court agrees with Plaintiffs. One of the chief advantages of opting into a collective  
8 action, such as the one brought by Plaintiffs, is that it “lower[s] individual costs to vindicate  
9 rights by the pooling of resources.” *Hoffmann-La Roche Inc. v. Sperling*, 493 U.S. 165, 179  
10 (1989). Here, this advantage would be significantly reduced or even eliminated if the proposed  
11 deponents are required to travel hundreds of miles for their depositions. *See, e.g., Bransfield v.*  
12 *Source Broadband Services, LLC*, 255 F.R.D. 447, 450 (W.D. Tenn. 2008) (rejecting  
13 defendants’ argument that opt-in plaintiffs in FLSA collective action must be required to appear  
14 for depositions in the forum where action was filed because doing so “would cancel much of the  
15 benefit gained by joining in the collective action” and because “the forum was chosen for [the  
16 opt-in plaintiffs]”). The Court is not persuaded by Suntrust’s interpretation of the case law cited  
17 by Plaintiffs, but even when taking its interpretation at face value, this case meets the criteria for  
18 excusing the deponents from appearing in the cities selected by Suntrust, as Suntrust has made  
19 no showing that the issues to be covered in the depositions are sufficiently complex to require  
20 in-person depositions.

21 Likewise, Suntrust’s argument that conducting the depositions via videoconference  
22 would be detrimental to its ability to question and observe the deponents is unconvincing.  
23 Parties routinely conduct depositions via videoconference, and courts encourage the same,  
24 because doing so minimizes travel costs and “permits the jury to make credibility evaluations  
25 not available when a transcript is read by another.” *Fanelli v. Centenary College*, 211 F.R.D.  
26 268, 270 (D.N.J. 2002) (citations omitted); *see also Guillen v. Bank of America Corp.*, No. 10-  
27 cv-05825, 2011 WL 3939690, at \*1 (N.D. Cal. August 31, 2011) (“A desire to save money  
28 constitutes good cause to depose out-of-state witnesses via telephone or remote means”).

1 Accordingly, Suntrust's motion is denied.

2 **IV. CONCLUSION**

3 Suntrust's motion to compel three named plaintiffs and twenty-five opt-in plaintiffs to  
4 appear for depositions in San Francisco or in three other cities of its choice is DENIED.

5 Suntrust may conduct in-person depositions of the named plaintiffs and opt-in plaintiffs in the  
6 fourteen cities proposed by Plaintiffs, or it may conduct the depositions via videoconference, at  
7 a date and time that is convenient to both parties.

8 IT IS SO ORDERED.

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11 DATED: November 15, 2011

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13 NATHANAEL M. COUSINS  
14 United States Magistrate Judge  
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