

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BOBBY MALLOY,) 1:08-cv-1362 OWW DLB
Plaintiff,) ORDER AFTER SCHEDULING
v.) CONFERENCE
MCDONALD'S CORPORATION, et al.,)
Defendants.)

I. Date of Scheduling Conference.

January 7, 2009.

II. Appearances Of Counsel.

David Washington, Esq., appeared on behalf of Plaintiff.

Samuel G. Grader, Esq., appeared on behalf of Defendant

McDonald's Corporation.

III. Summary of Pleadings.

1. Plaintiff alleges that he was injured at a McDonald's Restaurant in Holbrook, Arizona, when he did not see a short step and fell injuring his right arm and shoulder. Plaintiff alleges that the step on the outside of the building was difficult to see because of shadow. Plaintiff alleges that under general negligence and premises liability theories, the Defendants are

1 liable. Plaintiff seeks compensatory and punitive damages.
2 Defendant McDonald's Corporation denies these contentions.
3 Plaintiff believes Defendant Martinez Management, Inc. dba
4 McDonald's was served with the summons and complaint on November
5 21, 2008.

6 IV. Orders Re Amendments To Pleadings.

7 1. The true names and capacities of all Defendants have
8 not been accurately identified. It is anticipated that
9 amendments will be required to name the true names and capacities
10 of the Defendants who should properly be sued in this case.

11 2. Plaintiff shall ascertain the true names and capacities
12 of the Defendants intended to be sued and shall serve those
13 parties on or before March 9, 2009.

14 V. Factual Summary.

15 A. Admitted Facts Which Are Deemed Proven Without Further
16 Proceedings.

17 1. Plaintiff, Bobby Malloy, is a resident of Hilmar,
18 Stanislaus County, in the State and Eastern District of
19 California.

20 2. The alleged accident occurred at a McDonald's
21 Restaurant in Holbrook, Arizona.

22 3. The owner of the McDonald's Restaurant where the
23 incident occurred is different from the operator.

24 B. Contested Facts.

25 1. The true names and capacities of the Defendants
26 intended to be sued.

27 2. Defendant Martinez Management, Inc. dba
28 McDonald's, according to the Defendants, is not the proper

1 entity.

2 3. All remaining facts are in dispute.

3 VI. Legal Issues.

4 A. Uncontested.

5 1. Jurisdiction is invoked under 28 U.S.C. § 1332.

6 2. Venue is disputed as the Defendants maintain that
7 all events out of which the claim arises, occurred in the
8 District of Arizona and that there is no basis for maintenance of
9 this action in the Eastern District of California. Defendants
10 intend to address the issue of venue by motion when all
11 Defendants have been served.

12 B. Contested.

13 1. All remaining legal issues are contested.

14 VII. Consent to Magistrate Judge Jurisdiction.

15 1. The parties have not consented to transfer the
16 case to the Magistrate Judge for all purposes, including trial.

17 VIII. Corporate Identification Statement.

18 1. Any nongovernmental corporate party to any action in
19 this court shall file a statement identifying all its parent
20 corporations and listing any entity that owns 10% or more of the
21 party's equity securities. A party shall file the statement with
22 its initial pleading filed in this court and shall supplement the
23 statement within a reasonable time of any change in the
24 information.

25 IX. Further Scheduling Conference.

26 1. Based on the dispute over the proper place for trial of
27 this action, the scheduling of this case shall be deferred until
28 the motion for transfer of venue is decided.

2. Accordingly, the parties shall, upon the Court's ruling on Defendants' motion to transfer venue, contact the courtroom deputy clerk to fix a new Scheduling Conference date if the case remains in the Eastern District of California.

IT IS SO ORDERED.

Dated: January 7, 2009

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE