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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MICHAEL FERNANDES,

Case No. CV 09-1914-AWI-DLB

Plaintiff,

PLAINTIFF’S REQUEST TO CONTINUE THE
SCHEDULING CONFERENCE; ORDER

v.

February 2, 2010
9:15 a.m.
Courtroom #9 (5th Floor)
U.S. Magistrate Judge Dennis L. Beck

MC DONALD’S CORPORATION,
JAY HAZARI,

Defendant.

_____ /

Plaintiff requests a continuance of the currently set Scheduling Conference for the following reasons:

This is an ADA case. Plaintiff is a disabled wheelchair user who patronized a McDonald’s restaurant in Oakdale and encountered barriers.

Benjamin Glickman, lawyer for McDonald’s Corporation, signed a Waiver of Summons and requested Plaintiff to amend the Complaint to add Jay Hazari, the tenant. As an accommodation to McDonald’s, Plaintiff filed an Amended Complaint and mailed it to Mr. Hazari. In response, James Rushford, Mr. Hazari’s lawyer, claims that Mr. Hazari’s corporation “NAKC Inc.” is the proper party, and has demanded that the Complaint be amended to dismiss

Mr. Hazari and add NAKC Inc.

Plaintiff doesn't have the underlying documents and does not know who the proper tenant is. It appears that if this case is litigated, Plaintiff will need to do some further investigation and probably file a motion to further amend the complaint.

HOWEVER, all parties are cooperatively working toward settlement. Plaintiff has hired Kim Blackseth, a well-known ADA Expert, who has been hired in other cases by both Defense attorneys. An inspection of the property by Mr. Blackseth is set for January 26, 2010. Typically, Mr. Blackseth issues his Reports three weeks after an inspection. But because of Mr. Blackseth's planned vacation, the Report will not be expected until March 12, 2010. As soon as Plaintiff's counsel receives the Blackseth Report, he will e-mail it to each defense counsel. The Defendants will likely need at least until the end of March to consider the Blackseth Report and respond to it.

Plaintiff's counsel has filed many ADA cases and has a good feel for how easy an ADA case is going to be to settle. In the judgment of Plaintiff's counsel, this case is likely to settle in its entirety within 45 days of his receipt of the Blackseth Report. As such, the legal work that Plaintiff's counsel will otherwise be required to perform in connection with the pleadings and the Scheduling Conference will likely have no effect other than to increase attorneys' fees.

Therefore, Plaintiff asks the Court to continue the Scheduling Conference to mid-May 2010. This will give the parties time to attempt to settle, and if not, to file a helpful Scheduling Report.

January 12, 2010

S/Thomas N. Stewart, III
Attorney for Plaintiff

ORDER

Based on the above, the Court hereby continues the Scheduling Conference to May 25, 2010 at 9:15 am with the Joint Scheduling Report due one full week prior thereto.

IT IS SO ORDERED.

Dated: January 13, 2010

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE