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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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DANISHA HARRIS; ANTANISHA WILEY;
DEONTE MASK; JASON RYAN;
individually, and on behalf of
other members of the general
public similarly situated,

CIV. NO. 2:13-2472 WBS EFB

ORDER

Plaintiffs,

v.

CHIPTOLE MEXICAN GRILL, INC., a
Delaware corporation; and DOES 1
through 10, inclusive,

Defendant.

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On December 24, 2013, plaintiffs filed a Motion to
Strike nineteen of defendant's affirmative defenses pursuant to
Federal Rule of Civil Procedure 12(f). In lieu of filing an
opposition to plaintiffs' motion, defendant filed a "First
Amended Answer" on January 15, 2014.

Pursuant to Federal Rule of Civil Procedure 15(a)(1), a
"party may amend its pleading once as a matter of course within:

1 (A) 21 days after serving it, or (B) if the pleading is one
2 to which a responsive pleading is required, 21 days after service
3 of a responsive pleading or 21 days after service of a motion
4 under Rule 12(b), (e), or (f), whichever is earlier." Fed. R.
5 Civ. P. 15(a)(1). Defendant's "First Amended Answer" was
6 untimely under Rule 15(a)(1)(A) because it was filed twenty-eight
7 days after defendant filed its initial Answer. Defendant cannot
8 amend as a matter of course under Rule 15(a)(1)(B) because a
9 responsive pleading is not required for an answer. Because
10 defendant was not entitled to amend its answer under Rule
11 15(a)(1), Rule 15(a)(2) required defendant to obtain leave of
12 court or plaintiffs' written consent prior to amendment. See id.
13 R. 15(a)(2).

14 In the interest of efficiency and because defendant's
15 attempt to file an amended answer was only one week outside of
16 the time it could have done so as a matter of course, the court
17 will construe defendant's untimely "First Amended Answer" as a
18 request for leave to file an amended answer and grant defendant
19 leave to file an amended answer. After defendant files its
20 amended answer, plaintiffs may file a subsequent motion to strike
21 if doing so is truly necessary and the particularity plaintiffs
22 seek cannot be obtained through interrogatories.

23 IT IS THEREFORE ORDERED that plaintiffs' motion to strike
24 (Docket No. 8) be, and the same hereby is, DENIED as moot and the
25 hearing set for January 27, 2014, at 2:00 p.m. is vacated; and
26 defendant's "First Amended Answer" (Docket No. 9) be, and the
27 same hereby is, stricken as untimely.

28 Defendant shall file a First Amended Answer within five

1 days of the date that this Order is signed.

2 Dated: January 24, 2014

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4 WILLIAM B. SHUBB
5 UNITED STATES DISTRICT JUDGE
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