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6 IN THE UNITED STATES DISTRICT COURT

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10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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MIGUEL CASTANEDA, on behalf of
himself and others similarly situated,

No. C 08-04262 WHA

Plaintiff,

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v.
14 BURGER KING CORPORATION and
BURGER KING HOLDINGS, INC.,

**ORDER OVERRULING
DEFENDANT'S OBJECTIONS
TO DISCOVERY ORDER DATED
AUGUST 19, 2009**

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Defendants.

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Defendant objects to the discovery order of Magistrate Judge James Larson of August 19, 2009, which granted plaintiffs' recent motion to compel production of documents. Federal Rule of Civil Procedure 72(a) provides that a District Court may modify a Magistrate Judge's order on a nondispositive matter when it is "clearly erroneous or is contrary to law." None of Judge Larson's findings challenged by defendant were clearly erroneous or contrary to law.

In this disability-rights action, plaintiffs are disabled individuals who use wheelchairs or scooters for mobility. They seek injunctive relief and minimum statutory damages under the Americans with Disabilities Act, the Unruh Civil Rights Act, and the California Disabled Persons Act, to remedy alleged architectural barriers to access at restaurants leased by defendant Burger King to franchisees in California. In December 2008, after the complaint was filed in this lawsuit, defendant began issuing work orders to remediate the allegedly noncompliant restaurants. Magistrate Larson granted plaintiffs' motion to compel production of

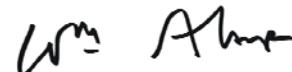
1 accessibility surveys that defendant's consultants made before the remediation work was
2 completed.

3 Defendant contends that several of Magistrate Larson's findings were incorrect: (1) that
4 plaintiffs could not have done similar pre-remediation accessibility surveys themselves because
5 defendant delayed providing plaintiffs with a list of its leased restaurants until after defendant
6 had done remediation work at those locations; (2) that plaintiffs could not obtain the
7 information in the pre-remediation surveys from other means after the remediation work was
8 done; (3) that plaintiffs made a sufficient showing under Federal Rule of Civil Procedure
9 26(b)(A)(ii) to defeat work product protection, namely, that they had a substantial need for the
10 materials to prepare their case, and could not, without undue hardship, obtain their substantial
11 equivalent by other means; and, (4) that the information in the accessibility surveys was
12 relevant to plaintiffs' claims that they faced barriers to access at the restaurants.

13 Because none of these findings is clearly erroneous or contrary to law, defendant's
14 objections are **OVERRULED**, and Judge Larson's discovery order is **APPROVED AND AFFIRMED**.

15 **IT IS SO ORDERED.**

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17 Dated: September 25, 2009.



18 WILLIAM ALSUP
19 UNITED STATES DISTRICT JUDGE
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