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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MIGUEL CASTANEDA, KATHERINE
CORBETT, and JOSEPH WELLNER, on
behalf of themselves and others similarly
situated,

No. C 08-04262 WHA

Plaintiffs,

v.

BURGER KING CORPORATION,

Defendant.

**TENTATIVE ORDER
GRANTING DEFENDANT'S
MOTION TO EXTEND
DISCOVERY CUT-OFF AND
TO TAKE INDIVIDUALIZED
DISCOVERY AS TO
OPT-IN PLAINTIFFS**

The following tentative order grants defendant's motion as follows. Plaintiffs shall file a written response to the tentative order no later than **NOON ON FEBRUARY 11, 2010**. Any reply shall be filed no later than **NOON ON FEBRUARY 12, 2010**.

* * *

This is an ADA action alleging barriers to access on behalf of mobility-impaired customers of restaurants leased by defendant. Ten classes have been certified — one for each of the restaurants at which a named plaintiff allegedly encountered an access barrier — with separate trials scheduled for each class. Pursuant to a December 15 order, the fact discovery cut-off for all ten trials was January 29, 2010, and the parties were each permitted to take 25 depositions. Class members are required to opt-in to be eligible to claim individualized statutory damages pursuant to the Unruh Act and the CDPA. The deadline for persons to opt in as class members is March 1, 2010. The first trial is scheduled to begin on April 19, 2010.

1 Defendant Burger King Corporation now moves to extend the fact discovery cut-off and
2 to expand the deposition limit so that it may take individualized discovery including depositions
3 from all claimants who affirmatively opt in to the classes and who are therefore eligible for
4 individualized statutory damages. It also seeks an order that plaintiffs be required to
5 supplement their Rule 26 disclosures and answers to written discovery as to all such claimants
6 who affirmatively opt in before the March 1 cut-off.

7 Defendant's motion is (tentatively) **GRANTED**. These are claimants with substantial
8 potential claims and defendant could not previously depose them before the discovery cut-off
9 because their identities were unknown. Fairness requires that these claimants submit to
10 depositions so that defendant can learn the basis of their claims for damages. Each claimant
11 shall submit to a two-hour deposition and shall bring all documents bearing upon his or her
12 prayer for statutory damages to the deposition, including documentation of occasions on which
13 he or she visited the restaurants in question. Each claimant's deposition should be held no later
14 than one week before the earliest trial corresponding to a restaurant at which the claimant
15 allegedly encountered a barrier to access. For example, depositions of claimants who allege
16 that they were customers of the restaurant at issue in the first trial (located at 6021 Central
17 Avenue, in El Cerrito) shall be held no later than **APRIL 12, 2010**. The Court expects counsel to
18 work cooperatively to maximize the number of depositions that can be scheduled for one day.
19 These depositions shall be scheduled without the necessity of subpoenas to claimants and it
20 shall be plaintiffs' counsel's responsibility to ensure the availability of claimants and their
21 documents. Other than as stated, Rule 26(a) disclosures would not be required.

22 **IT IS SO ORDERED.**

23
24 Dated: February 8, 2010.

25 
26 _____
27 WILLIAM ALSUP
28 UNITED STATES DISTRICT JUDGE