IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROY D. NEWPORT, *et al.*,

Plaintiffs/Counter-Defendants,

v.

BURGER KING CORPORATION,

Defendant/Counter-Claimant,

v.

ANTELOPE VALLEY RESTAURANTS, INC, *et al.*

Counter-Defendants.
_____/

No. C 10-04511 WHA

ORDER ON DEFENDANT BURGER KING'S REQUEST AT DOCKET NUMBER 373 FOR LEAVE TO FILE A MOTION TO STRIKE EVIDENTIARY OBJECTIONS

Defendant Burger King Corporation has submitted a "request for leave to file a motion to strike evidentiary objections [Dkt. Nos. 350-1 and 361], or, in the alternative, request that the court overrule the evidentiary objections or grant [BKC] leave to respond to the same" (Dkt. No. 373). Plaintiffs/counter-defendants oppose (Dkt. No. 386). Strategic Restaurants Acquisition Company II, LLC, SRAC Holdings, I, Inc., and Jerry M. Comstock ("Strategic") have not filed a response.

The request is deemed to be the motion. Rule 7-3(c) states, "[a]ny evidentiary and procedural objections to the opposition must be contained within the reply brief or memorandum." Counter-defendants and Strategic each filed reply briefs in support of their respective motions for summary judgment (Dkt. Nos. 350 and 367). Likewise, they each filed

objections to evidence submitted by BKC in opposition to their respective motions for summary judgment (Dkt. Nos. 350-1 and 361).

Evidentiary objections "must be contained within the reply brief or memorandum," not filed as a separate submission, or even contained in an attachment to the reply, as is the case with Strategic's evidentiary objection. Thus, the submissions at docket numbers 350-1 and 361 are hereby **STRICKEN**. As is required, the Court will independently consider the admissibility of any evidence relied on in ruling on the motions for summary judgment.

IT IS SO ORDERED.

Dated: December 5, 2011.

WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE