

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

MOHAN VALLABHARPURAPU, et al.,

Plaintiffs,

v.

BURGER KING CORPORATION,

Defendant.

Case No.: 11-cv-667 WHA (JSC)

**ORDER RE: DEFENDANT'S MOTION
TO STAY OR, ALTERNATIVELY,
ENLARGE ITS TIME TO COMPLY
WITH THE COURT'S OCTOBER 14,
2011 ORDER (Dkt. No. 131)**

Now pending before the Court is Defendant's Motion to Stay or Enlarge the Time to Comply with the Court's October 14, 2011 Order. (Dkt. No. 131). Having considered the briefing of the parties, the Court hereby DENIES Defendant's motion.

The Court's October 14, 2011 order required Defendant to produce documents responsive to Plaintiffs' First Request for the Production of Documents, Nos. 1 and 7 redacted to remove any opinions, impressions or strategies. Defendant seeks a stay of that order or an extension of the deadline for compliance to allow it to file objections to the order pursuant to Local Rule 72-2.

The current motion is akin to a motion for stay pending appeal. In determining whether a stay pending appeal is appropriate, the Court considers the following four factors:

1 “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the
2 merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether
3 issuance of the stay will substantially injure the other parties interested in the proceeding; and
4 (4) where the public interest lies.” Hilton v. Braunskill, 481 U.S. 770, 776 (1987).

5 As an initial matter, the Court notes that Defendant has already thoroughly – and
6 unsuccessfully – litigated this very issue in Castaneda v. Burger King Corp., No. 08-04262
7 WHA (N.D. Cal.). See, e.g., Castaneda v. Burger King Corp., 259 F.R.D.194, 199 (N.D.
8 Cal. 2009); Castaneda, No. 08-04262, Dkt. Nos. 222, 238, 253. As such, Defendant cannot
9 demonstrate a likelihood of success on the merits.

10 Defendant nonetheless alleges that it will be irreparably harmed if it is required to
11 produce the documents because the work product protection will be “irretrievably lost” upon
12 production. The Court disagrees. Nothing will be lost if the surveys are produced because
13 Defendant has only been ordered to provide *factual information*. All that is required to be
14 produced are measurements and photographs. The Court’s order clearly specified that
15 Defendant should redact any potentially protected information such as impressions,
16 strategies, or opinions. The real potential harm to Defendant is from “admitting” the
17 documents into evidence, not producing the documents. Therefore, if the district court were
18 to overturn this Court’s order, then Plaintiffs would not be allowed to use the information in
19 the litigation and the parties would be returned to the very same position they are in now.
20 Furthermore, some of the very documents at issue here have already been produced to
21 Plaintiffs by third-parties and were also ordered to be produced in the related case Newport
22 v. Burger King Corp., No. 10-cv-4511-WHA.

23 Plaintiffs, in contrast, will suffer irreparable harm if they do not obtain this discovery
24 in the timeframe outlined in the Court’s October 14, 2011 order. The deadline for Plaintiffs
25 to file for class certification is November 17, 2011. As the Court found in its order, this
26 discovery is relevant to Plaintiffs’ class allegations and the proper subject of discovery at this
27 time. Any further delay in producing these documents will prejudice Plaintiffs’ ability to
28 prepare their class certification motion.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Finally, the public interest lies in expeditiously resolving this case. Granting Defendant's request for a stay will merely cause delay.

Accordingly, Defendant has failed to establish that it is entitled to a stay of the Court's order or that an extension of the deadline to comply is appropriate. Defendant's motion to stay or for an extension of time (Dkt. No. 131) is DENIED, except that the October 21, 2011 deadline is extended to October 24, 2011. The parties are, of course, free to agree to the compromise proposed by Plaintiffs on page four of their Opposition. (Dkt. No. 133).

IT IS SO ORDERED.

Dated: October 21, 2011



JACQUELINE SCOTT CORLEY
UNITED STATES MAGISTRATE JUDGE