

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3 OAKLAND DIVISION
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5 CALIFORNIANS FOR DISABILITY
6 RIGHTS, INC. ('CDR'), CALIFORNIA
7 COUNCIL OF THE BLIND ('CCB'), BEN
8 ROCKWELL, AND DMITRI BELSER, on
9 behalf of all others similarly situated,

10 Plaintiffs,

11 vs.

12 CALIFORNIA DEPARTMENT OF
13 TRANSPORTATION ('CALTRANS') and
14 WILL KEMPTON, in his official capacity,

15 Defendants.

Case No: C 06-5125 SBA

**ORDER DENYING DEFENDANTS'
MOTION TO STRIKE**

Docket 414, 415

16 At the pretrial conference held on September 1, 2009, Defendants requested leave of Court
17 to file dispositive motions as to certain claims that they argued could be resolved as a matter of
18 law. The Court authorized Defendants to file briefs specifically on the issues of curb ramps,
19 surveys and temporary routes. The Court also authorized Plaintiffs to file a supplemental
20 memorandum addressing the statute of limitations issue presented in Defendants' motion in limine
21 no. 8, and directed Defendants to file a reply thereto. The Court did not authorize any additional
22 motions.

23 Without leave of Court, Defendants included amongst its voluminous filings the instant
24 motion to strike the declaration of Peter Margen. Plaintiffs submitted his declaration in support of
25 their response to Defendants' brief regarding injunctive relief. Docket 414. The crux of
26 Defendants' motion is that Mr. Margen's declaration includes allegedly new arguments and
27 evidence regarding sites disclosed by him after the close of fact discovery. Plaintiffs have
28 requested leave to file a response to Defendants' motion to strike. Docket 415.

1 The bulk of Defendants' motion to strike is devoted to their complaint—which was
2 discussed at length at the pretrial conference—that the sites referenced by Mr. Margen in his expert
3 report were disclosed after the close of fact discovery.¹ The Court is unpersuaded. Though the
4 sites at issue were disclosed a few weeks after the discovery cut-off, Defendants have had several
5 months to inspect the sites listed in Mr. Margen's report in order to assess the validity of his
6 opinions, irrespective of the discovery cut-off. In addition, Plaintiffs offered to make Mr. Margen
7 and themselves available for deposition, but such offer was declined.² Given these circumstances,
8 Defendants cannot legitimately claim surprise or lack of notice with regard to the locations in
9 dispute. However, to the extent that Plaintiffs attempt to elicit or Mr. Margen attempts to offer
10 testimony at trial beyond the scope of his expert report, Defendants may raise an objection, if
11 warranted, at that time. Accordingly,

12 IT IS HEREBY ORDERED THAT Defendants' unauthorized motion to strike is DENIED.
13 Plaintiffs' motion for leave to file a response to the motion to strike is DENIED as moot. This
14 order terminates Docket Nos. 414 and 415. The parties shall refrain from further unauthorized
15 filings.

16 IT IS SO ORDERED.

17 Dated: September 15, 2009

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19 SAUNDRA BROWN ARMSSTRONG
20 United States District Judge

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25 ¹ Mr. Margen's report is dated May 18, 2009, which is after the discovery cut-off date of
26 April 29, 2009.

27 ² On June 11, 2009, the Court approved the parties' stipulation to extend the expert
28 discovery cut-off as to specified experts. Docket 330. Defendants, however, did not seek leave to
extend the discovery cut-off date to obtain additional discovery from Mr. Margen or relating to his
expert report.