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TACO BELL CORP.

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8 THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 FRANCIE E. MOELLER, et al.) Case No. C 02 5849 MJJ ADR
12 Plaintiffs,)
13 v.) FIRST AMENDED ANSWER TO
14 TACO BELL CORP.,) PLAINTIFFS' FIRST AMENDED CLASS
15 Defendant.) ACTION COMPLAINT
16) DEMAND FOR JURY TRIAL
17)

17 Defendant Taco Bell Corp. ("Taco Bell"), by its attorneys, in answer to Plaintiffs'
18 First Amended Class Action Complaint, admits, denies and alleges as follows:

19 **ANSWER TO INTRODUCTORY ALLEGATIONS**

- 20 1. Denied.
21 2. Denied.
22 3. Denied.

23 **ANSWER TO JURISDICTION AND VENUE ALLEGATIONS**

- 24 4. Denied.
25 5. Denied.
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28 TACO BELL'S FIRST AMENDED ANSWER TO PLAINTIFFS'
FIRST AMENDED CLASS ACTION COMPLAINT
Case No. C 02 5849 MJJ ADR

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ANSWER TO INTRA-DISTRICT ASSIGNMENT ALLEGATIONS

6. Admitted that the allegations in the Complaint relate to alleged events in Sonoma, Contra Costa and/or Marin counties that are within the San Francisco and Oakland Divisions of this Court and denied that Taco Bell has violated any of plaintiffs' rights upon which this action can be based.

ANSWER TO ALLEGATIONS CONCERNING PARTIES

- 7. Denied for lack of information.
- 8. Denied for lack of information.
- 9. Denied for lack of information.
- 10. Denied for lack of information.
- 11. Denied for lack of information.
- 12. Denied for lack of information.
- 13. Denied for lack of information.
- 14. Denied for lack of information.
- 15. Denied for lack of information.
- 16. Denied for lack of information.
- 17. Denied for lack of information.
- 18. Denied for lack of information.
- 19. Admitted.

ANSWER TO CLASS ACTION ALLEGATION

- 20. Admitted that Plaintiffs seek to maintain this action as a class action; otherwise denied.
- 21. Denied.
- 22. Denied.
- 23. Denied.
- 24. Denied for lack of information.
- 25. Denied.

1 26. Denied.

2 27. Denied.

3 28. Denied.

4 **ANSWER TO STATEMENT OF FACTS**

5 29. Denied for lack of information.

6 30. Admitted.

7 31. Denied.

8 32. Denied.

9 33. Denied for lack of information.

10 34. Admitted that Taco Bell owns and operates a restaurant located at 40 San Pablo Towne
11 Center, Richmond, California; otherwise denied.

12 35. Denied.

13 36. Denied.

14 37. Denied for lack of information.

15 38. Admitted.

16 39. Denied.

17 40. Denied.

18 41. Denied for lack of information.

19 42. Admitted.

20 43. Denied.

21 44. Denied.

22 45. Denied.

23 46. Denied.

24 47. Denied.

25 48. Admitted.

26 49. Denied for lack of information.

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28 TACO BELL'S FIRST AMENDED ANSWER TO PLAINTIFFS'
FIRST AMENDED CLASS ACTION COMPLAINT
Case No. C 02 5849 MJJ ADR

ANSWER TO FIRST CLAIM FOR RELIEF

1
2 50. Taco Bell incorporates its responses to the allegations of paragraphs 1 through 49
3 above.

4 51. Taco Bell admits that Plaintiffs correctly quote from among the many provisions of the
5 ADA and that this allegation of the Complaint merely states a provision of the law, to which no
6 response is required.

7 52. Admitted.

8 53. Admitted.

9 54. Denied.

10 55. Denied.

11 56. Denied.

12 57. Denied.

ANSWER TO SECOND CLAIM FOR RELIEF

13
14 58. Taco Bell incorporates its responses to the allegations of paragraphs 1 through 57
15 above.

16 59. Admitted.

17 60. Denied.

18 61. Plaintiffs merely state legal conclusions which require no response and the provisions of
19 the Unruh Act speak for themselves.

20 62. Denied.

21 63. Denied.

22 64. Denied.

23 65. Denied.

ANSWER TO THIRD CLAIM FOR RELIEF

24
25 66. Taco Bell incorporates its responses to the allegations of paragraphs 1 through 65
26 above.

1 67. Admitted.

2 68. Denied.

3 69. Plaintiffs merely state legal conclusions which require no response and the provisions of
4 the California Disabled Persons Act speak for themselves.

5 70. Denied.

6 71. Denied.

7 72. Denied.

8 73. Denied.

9 **ANSWER TO ALL ALLEGATIONS**

10 74. Each and every allegation not expressly admitted above is denied.

11 **FIRST DEFENSE**

12 The complaint fails to state a claim against Taco Bell upon which relief can be
13 granted.

14 **SECOND DEFENSE**

15 Plaintiffs' claims are barred in whole or in part by the applicable statute or statutes
16 of limitations.

17 **THIRD DEFENSE**

18 This Court is without jurisdiction concerning any Taco Bell facility in California not
19 owned and operated by Taco Bell Corp.

20 **FOURTH DEFENSE**

21 The Complaint does not satisfy the requirements of Fed. R. Civ. P. 23(a) and 23(b).

22 **FIFTH DEFENSE**

23 To the extent Plaintiffs' claims are alleged to apply to Taco Bell Corp.'s existing
24 facilities, the removal of the barriers sought by Plaintiffs is not readily achievable.

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SIXTH DEFENSE

To the extent, if any, the Defendant has undertaken alterations to its places of public accommodation, the provision of an accessible path of travel is disproportionate in cost and scope to Defendant's alterations.

SEVENTH DEFENSE

The Defendant's places of public accommodation are accessible to the maximum extent feasible.

EIGHTH DEFENSE

Taco Bell has made good faith efforts to comply with the ADA, the Unruh Act, and the Colorado Disabled Persons Act, including providing appropriate alternative access.

NINTH DEFENSE

To the extent that Taco Bell has failed to comply with any of the regulations or guidelines under the ADA or the Unruh Act, such noncompliance was inadvertent and is *de minimus*.

TENTH DEFENSE

Plaintiffs have failed to mitigate their damages, if any.

ELEVENTH DEFENSE

Plaintiffs' claims under the California Disabled Persons Act is barred to the extent that it interferes with Taco Bell's compliance with laws and regulations that are equally applicable to all persons.

TWELFTH DEFENSE

Plaintiffs' claims under the California Disabled Persons Act is barred by virtue of Taco Bell's compliance with the ADA and the Unruh Act.

THIRTEENTH DEFENSE

Plaintiffs may not recover damages under both the Unruh Act and the California Disabled Persons Act.

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FOURTEENTH DEFENSE

The imposition of statutory minimum damages in this matter would violate Defendant's Eighth Amendment protection against excessive fines in violation of the California Constitution and the United States Constitution.

FIFTEENTH DEFENSE

The imposition of punitive damages in this matter would violate Defendant's right to due process of law in violation of the California Constitution and the United States Constitution.

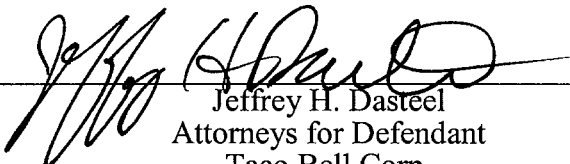
SIXTEENTH DEFENSE

Taco Bell is not legally responsible for property that is not within Taco Bell's possession, custody or control.

WHEREFORE, Defendant Taco Bell Corp. prays that the Court enter judgment dismissing Plaintiffs' Complaint and award Taco Bell its costs, attorney's fees, and such other relief as may be proper.

DATED: October 19, 2004

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

By: 
Jeffrey H. Dasteel
Attorneys for Defendant
Taco Bell Corp.