

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

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Miguel Castaneda,

No. C 08-4262 WHA (JL)

Plaintiff,

v.

**ORDER GRANTING MOTION TO  
COMPEL DEPOSITION (Docket # 250)**

Burger King Corporation, et al.,

Defendants.

\_\_\_\_\_ /  
Plaintiffs ask this Court to order Burger King Corporation (“BKC”) to produce witnesses pursuant to Rule 30(b)(6), Federal Rules of Civil Procedure, addressing BKC’s policies and procedures with respect to disabled access. On June 3, 2009, Plaintiffs served on BKC their a notice of deposition pursuant to Rule 30(b)(6), requesting to depose the persons most knowledgeable about (among other topics) BKC’s policies relating to construction, alteration and maintenance of the restaurants at issue. The parties scheduled the deposition with no objection from BKC concerning the topics. The deposition was then rescheduled several times. When Plaintiffs contacted BKC to reschedule the deposition following the Court’s decision on Plaintiffs’ motion for class certification, BKC took the position that its policies were no longer at issue and that “[t]he remaining questions in the case are whether the restaurants contain barriers that should be remedied.”

**United States District Court**  
For the Northern District of California

1 Plaintiffs seek not only removal of barriers, but changes to the BKC policies that  
 2 permitted those barriers to occur. Under the plain language of Title III's remedial provision,  
 3 should Plaintiffs prove violations of the statutes above, they are entitled to an injunction that  
 4 "shall include" both an order to bring the facilities into compliance and, where appropriate,  
 5 "shall also include requiring the . . . modification of a policy, . . . to the extent required by  
 6 this subchapter. 42 U.S.C. § 12188(b)(emphasis added). Contrary to BKC's argument infra,  
 7 this remedial provision demonstrates that its policies are directly relevant to the merits of  
 8 the case.

9 Judge Alsup granted class certification as to ten BKC stores and otherwise denied  
 10 class certification (Docket # 226). In the order, Judge Alsup found that Plaintiffs had failed  
 11 to show evidence of any "common blueprint" used by BKC which created barriers to  
 12 access:

13 "The only thing that comes close to a common blueprint concerns "queue lines."  
 14 These are the lines in which customers wait to order. Drawings of sample front  
 15 counter areas in a 1984 equipment plan layout and a 1991 operations manual by  
 16 Burger King Corporation stated that queue lines should be a minimum of 30-inches  
 17 wide, which violated the California standards requiring queue lines to be a minimum  
 of 36-inches wide.<sup>3</sup> The record shows, however, that many of the restaurants visited  
 by plaintiffs used layouts which did not have queue lines at all. No other feature,  
 such as door pressure, ramp placement, ramp angle, mirror placement, and so on  
 was centralized (Campins Exh. 123, 124, 126; Blackseth Exh. 1)." (Order, p. 7)

18 Plaintiffs do not identify any other policy, plan, or blueprint from Burger King  
 19 Corporation that even arguably called for a feature that would violate the ADA or  
 20 California standards, except to assert in passing that defendant's "speed of service  
 21 standards," which set maximum times within which customers must be served,  
 "exacerbate the access issues created by queue lines and condiment and drink  
 dispensers." Plaintiffs do not, however, explain why this would be so." (Order at p.7,  
 n.3)

22  
 23 In examining the feasibility of appointment of a special master, Judge Alsup stated:  
 24 "Appointing a special master would not solve the real problem — namely, that there is no  
 25 affirmative common corporate policy calling for access barriers *at all 92 stores*. Even a  
 26 special master would have to adjudicate all of the myriad issues. All would then be subject  
 27 to relitigation before the district judge under Rule 53(f)." (Order at 19:28-20:3, emphasis  
 28 added).

1 Plaintiffs ask this Court to distinguish Judge Alsup's order as finding only that the  
2 lack of a common blueprint or common offending policies at *all 92* BKC stores precluded  
3 broader certification, but made no holding that BKC policies or lack of policies affect any of  
4 the *10 individual restaurants* still at issue in this case.

5 Defendants ask this Court to conclude that BKC policies were relevant only to class  
6 certification and thus no longer either relevant or discoverable. BKC argues that Judge  
7 Alsup certified 10 separate classes for 10 separate trials, one for each of the ten  
8 restaurants visited by one or more of the named Plaintiffs. Thus, BKC concludes that its  
9 policies are no longer at issue; only the current conditions at the 10 restaurants as to which  
10 Judge Alsup certified classes are at issue.

11 BKC concedes that the ADA permits injunctive relief requiring the modification of a  
12 policy "where appropriate." However, BKC interprets the class certification order to find  
13 explicitly that class relief is proper only as to specific defects at particular restaurants.

14 Not surprisingly, the truth lies somewhere in between the two sides' positions.

15 Judge Alsup in the class certification order found no common blueprint or common  
16 policy affecting barriers to access, however that does not mean he found no evidence of  
17 BKC policies creating barriers, just none that was universal to all 92 of the BKC restaurants  
18 for which Plaintiffs sought class certification. There may very well be BKC policies which  
19 affect barriers to access at the 10 restaurants for which Judge Alsup granted class  
20 certification. Plaintiffs are entitled to discovery on policies affecting barriers to access at  
21 those restaurants, as relevant to both liability and injunctive relief to prevent those policies  
22 from continuing to create barriers to access at those 10 restaurants.

23 Accordingly, Plaintiffs' motion to compel a deposition pursuant to Rule 30(b)(6)  
24 Federal Rules of Civil Procedure is granted. BKC shall produce the witnesses or witnesses  
25 for deposition as noticed by Plaintiffs.

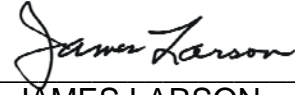
26

27

28

1 IT IS SO ORDERED.

2 DATED: November 17, 2009

3 

4 JAMES LARSON  
5 U.S. Magistrate Judge

6  
7 G:\JLALL\CHAMBERS\CASES\CIV-REF\08-4262\Order grant 250.wpd  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28