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6 TACO BELL OF AMERICA, INC. and
Cross-Defendant TACO BELL CORP.
7

8 THE UNITED STATES DISTRICT COURT

9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10	ERNESTINA SALDANA-NEILY)	Case No. C 04 4571 MJJ
)	
11	Plaintiff,)	CROSS-DEFENDANT TACO BELL
)	CORP.'S ANSWER TO DEFENDANT
12	v.)	AND CROSS-CLAIMANT DOROTHY
)	M. HIURA TRUST'S CROSS-
13	TACO BELL OF AMERICA, INC.;)	COMPLAINT
	DOROTHY M. HIURA TRUST; and DOES)	
14	1-25; HEDIA PETROLEUM, INC., dba)	Hon. Martin J. Jenkins
	CAMPBELL UNION 76; BOZORGHADAD)	Action Filed: October 28, 2004
15	TRUST; and DOES 26-50, INCLUSIVE,)	Trial Date: Not Yet Set
)	
16	Defendants.)	
	<hr/> DOROTHY M. HIURA TRUST,)	
17)	
	Defendant and Cross-Claimant,)	
18)	
	v.)	
19)	
	TACO BELL CORP.,)	
20)	
	Cross-Defendant.)	
21	<hr/>)	

ANSWER TO CROSS-CLAIM

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2 Defendant Taco Bell Corp. ("Taco Bell"), on behalf of itself, by and through its
3 attorneys, answer the allegations set forth in Defendant and Cross-Claimant the Dorothy M. Hiura
4 Trust's ("Hiura") Cross-Complaint (the "Cross-Complaint") and admit, deny, and allege as follows:

5 1. Taco Bell lacks sufficient knowledge or information to form a belief as to the truth of
6 the allegations contained in Paragraph 1 of the Cross-Complaint, and on that basis denies the
7 allegations. Taco Bell further responds that the allegations contained in Paragraph 1 of the Cross-
8 Complaint set forth legal conclusions and therefore no response is required.

9 2. Except as expressly admitted, Taco Bell denies each and every allegation contained in
10 Paragraph 2 of the Cross-Complaint. Taco Bell further responds as follows: "Taco Bell Corp." is a
11 corporation organized and existing under the laws of the State of California with its principal place
12 of business in Irvine, California; Taco Bell of America, Inc. is a defendant named in Plaintiff
13 Ernestina Saldana-Neily's Complaint which is the subject of this action (the "Complaint"); and
14 Taco Bell of America, Inc. is a wholly-owned subsidiary of Taco Bell Corp.

15 3. Taco Bell lacks sufficient knowledge or information to form a belief as to the truth of
16 the allegations contained in Paragraph 3 of the Cross-Complaint, and on that basis denies the
17 allegations.

18 4. Taco Bell lacks sufficient knowledge or information to form a belief as to the truth of
19 the allegations contained in Paragraph 4 of the Cross-Complaint, and on that basis denies the
20 allegations, except admits that the Hiura Trust is the current lessor and Taco Bell is the current
21 lessee of the property located at 1546 Camden Avenue, Campbell, California (the "Property").

22 5. Taco Bell admits that it entered into a Standard Form Lease Agreement with Dorothy
23 M. Hiura in 1969 relating to the Property (the "Contract"). Except as expressly admitted, Taco Bell
24 denies the remaining allegations contained in Paragraph 5 of the Cross-Complaint on the grounds
25 that the Contract speaks for itself.

26 6. Taco Bell denies the allegations contained in Paragraph 6 of the Cross-Complaint on the
27 grounds that the Contract speaks for itself.

1 7. Taco Bell denies the allegations contained in Paragraph 7 of the Cross-Complaint on the
2 grounds that the Contract speaks for itself.

3 8. Taco Bell lacks sufficient knowledge or information to form a belief as to the truth of
4 the allegations contained in Paragraph 8 of the Cross-Complaint, and on that basis denies the
5 allegations.

6 9. Taco Bell admits that the Complaint alleges, among other things, that the Property fails
7 to comply with certain disability-related laws promulgated by the State of California and the
8 United States of America. Except as expressly admitted, Taco Bell denies each and every
9 allegation contained in Paragraph 9 of the Cross-Complaint.

10 10. Taco Bell admits that it owns and operates more than one food outlet throughout
11 California and the United States. Taco Bell further responds that the allegations contained in
12 Paragraph 10 of the Cross-Complaint set forth legal conclusions and therefore no response is
13 required; to the extent a response is required and except as expressly admitted, Taco Bell denies the
14 allegations.

15 11. Taco Bell lacks sufficient knowledge or information to form a belief as to the truth of
16 the allegations contained in Paragraph 11 of the Cross-Complaint, and on that basis denies the
17 allegations.

18 12. Taco Bell responds that the allegations contained in Paragraph 12 of the Cross-
19 Complaint set forth legal conclusions and therefore no response is required; to the extent a
20 response is required and except as expressly admitted, Taco Bell denies the allegations and states
21 that the Contract speaks for itself.

22 13. Taco Bell responds that the allegations contained in Paragraph 13 of the Cross-
23 Complaint set forth legal conclusions and therefore no response is required; to the extent a
24 response is required and except as expressly admitted, Taco Bell denies the allegations and states
25 that the Contract speaks for itself.

26 14. Taco Bell responds that the allegations contained in Paragraph 14 of the Cross-
27 Complaint set forth legal conclusions and therefore no response is required; to the extent a

1 response is required and except as expressly admitted, Taco Bell denies the allegations and states
2 that the Contract speaks for itself.

3 15. Taco Bell denies each and every allegation contained in Paragraph 15 of the Cross-
4 Complaint.

5 16. Taco Bell realleges, repeats and incorporates by reference Paragraphs 1 through 15,
6 inclusive, of this Answer as though they were fully set forth herein.

7 17. Taco Bell admits the allegations contained in Paragraph 17 of the Cross-Complaint,
8 except notes that Plaintiff's suit was originally numbered as Case Number C 04 4571 PVT and later
9 removed and renumbered as Case Number C 04-4571 MJJ. Except as expressly admitted, Taco
10 Bell denies each and every allegation contained in Paragraph 17 of the Cross-Complaint.

11 18. Taco Bell responds that the allegations contained in Paragraph 18 of the Cross-
12 Complaint set forth legal conclusions and therefore no response is required; to the extent a
13 response is required and except as expressly admitted, Taco Bell denies the allegations.

14 19. Taco Bell responds that the allegations contained in Paragraph 19 of the Cross-
15 Complaint set forth legal conclusions and therefore no response is required; to the extent a
16 response is required and except as expressly admitted, Taco Bell denies the allegations.

17 20. Taco Bell responds that the allegations contained in Paragraph 20 of the Cross-
18 Complaint set forth legal conclusions and therefore no response is required; to the extent a
19 response is required and except as expressly admitted, Taco Bell denies the allegations.

20 21. Taco Bell lacks sufficient knowledge or information to form a belief as to the truth of
21 the allegations contained in the first and third sentences of Paragraph 21 of the Cross-Complaint,
22 and on that basis denies the allegations. Taco Bell responds that the allegations contained in the
23 third sentence of Paragraph 21 of the Cross-Complaint set forth legal conclusions and therefore no
24 response is required; to the extent a response is required and except as expressly admitted, Taco
25 Bell denies the allegations.

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ANSWER TO PRAYERS FOR RELIEF

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2 1. Taco Bell responds that the allegations contained in the Paragraph 1 of the Cross-
3 Complaint's prayer for relief set forth legal conclusions and therefore no response is required.

4 2. Taco Bell denies that Hiura is entitled to indemnity from Taco Bell.

5 3. Taco Bell denies that Hiura is entitled to attorneys' fees or costs incurred in defending
6 or resolving any of Plaintiff Ernestina Saldana-Neily's claims.

7 4. Taco Bell denies that Hiura is entitled to attorneys' fees or costs incurred in defending
8 or resolving any of Plaintiff Ernestina Saldana-Neily's claims.

9 5. Taco Bell denies that Hiura is entitled to attorneys' fees or costs incurred in prosecuting
10 the cross-claims against Taco Bell.

11 6. Taco Bell denies that Hirua is entitled to any other relief under its Cross-Complaint.

AFFIRMATIVE DEFENSES TO PLAINTIFF'S CROSS-COMPLAINT

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13 Taco Bell allege the following affirmative defenses with respect to the claims alleged in the
14 Cross-Complaint, without assuming the burden of proof where the burden of proof rests on
15 Plaintiff:

FIRST AFFIRMATIVE DEFENSE

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17 1. All the counts in Hiura's Cross-Complaint are barred by its own breach of the agreement
18 with Taco Bell which excuses any further performance on behalf of Taco Bell

SECOND AFFIRMATIVE DEFENSE

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20 2. Taco Bell alleges that any contractual obligations of Taco Bell have been excused and
21 discharged by material failure of consideration in that Hiura failed to perform the express and
22 implied terms of the agreement upon which the Cross-Complaint is founded.

THIRD AFFIRMATIVE DEFENSE

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24 3. Taco Bell alleges that it performed, satisfied and discharged any contractual obligations
25 it may have owed to Hiura arising out of the agreement upon which the Cross-Complaint is
26 founded.

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FOURTH AFFIRMATIVE DEFENSE

4. Taco Bell alleges that all of the counts alleged in Hiura's Cross-Complaint are barred in that conditions precedent to Taco Bell's obligations have not been satisfied.

FIFTH AFFIRMATIVE DEFENSE

5. Taco Bell alleges that all of the counts alleged in Hiura's Cross-Complaint are barred in that conditions subsequent to Taco Bell's obligations have not been satisfied.

SIXTH AFFIRMATIVE DEFENSE

6. Taco Bell alleges that all of the counts alleged in Hiura's Cross-Complaint are barred in that any failure of Taco Bell to perform any contractual obligations alleged in the Cross-Complaint was caused by the conduct of Hiura such that the obligations of Taco Bell to perform were excused.

SEVENTH AFFIRMATIVE DEFENSE

7. Taco Bell alleges that if Hiura suffered any damages then Taco Bell is entitled to a set-off due to harm suffered by Taco Bell as a result of Hiura's breach of contract and tortious conduct.

EIGHTH AFFIRMATIVE DEFENSE

8. Taco Bell alleges that any damages arising from the counts alleged in Hiura's Cross-Complaint were proximately caused by the negligence of Hiura and/or its agents in failing to exercise the proper care which a prudent person under the same or similar circumstances would have exercised. Hiura's damages, if any, must accordingly be reduced in proportion to the amount of negligence of fault attributable to Hiura or its agents.

NINTH AFFIRMATIVE DEFENSE

9. Taco Bell alleges that all of the counts in Hiura's Cross-Complaint are barred by the applicable statute of limitations.

TENTH AFFIRMATIVE DEFENSE

10. Hiura's claims are barred, in whole or in part, by the doctrines of estoppel, waiver, laches, and unclean hands.

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ELEVENTH AFFIRMATIVE DEFENSE

11. Taco Bell alleges that Hiura has, by virtue of its own acts, omissions, conduct, and statements, waived any and all claim(s) against Taco Bell.

TWELFTH AFFIRMATIVE DEFENSE

12. Hiura has failed to state a claim upon which relief may be granted with respect to all counts alleged in the Cross-Complaint.

THIRTEENTH AFFIRMATIVE DEFENSE

13. Hiura has not suffered any loss or harm as a result of any alleged act or omission of Taco Bell or its agents, and therefore Hiura's Cross-Complaint against Taco Bell is barred.

FOURTEENTH AFFIRMATIVE DEFENSE

14. Hiura has failed to mitigate its damages, if any, and therefore Hiura's Cross-Complaint against Taco Bell is barred.

FIFTEENTH AFFIRMATIVE DEFENSE

15. Should Hiura recover damages from Taco Bell, Taco Bell is entitled to indemnification, either in whole or in part, from the persons whose negligence and/or fault proximately contributed to Hiura's alleged damages, if any.

SIXTEENTH AFFIRMATIVE DEFENSE

16. At all relevant times, Taco Bell has met all federal and state statutory and regulatory obligations owed to Plaintiff and all other individuals with disabilities, including sight and hearing impaired individuals and individuals in wheelchairs, if any, and therefore Hiura's Cross-Complaint against Taco Bell is barred.

SEVENTEENTH AFFIRMATIVE DEFENSE

17. At all relevant times, Taco Bell has complied with all of the Americans with Disabilities Act final rules and Accessibility Guidelines, 28 C.F.R. Ch. 1, Part 36, and therefore Hiura's Cross-Complaint against Taco Bell is barred.

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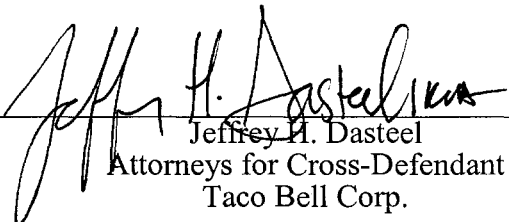
18. Taco Bell presently has insufficient knowledge or information upon which to form a belief as to whether it may have additional, as yet unstated, affirmative defenses available. Taco Bell hereby gives notice that it intends to rely upon any other defenses that may become available or apparent during the discovery proceedings in this matter and hereby reserves its right to amend the Answer and to assert any such affirmative defense.

WHEREFORE, Defendant Taco Bell prays for judgment as follows:

1. That the Court dismiss Hiura's Cross-Complaint with prejudice, orders that Hiura take nothing by this action, and enters judgment in Defendant Taco Bell's favor;
2. That Taco Bell be awarded all of its litigation costs and attorneys' fees in this action; and
3. That the Court award such other and further relief as it deems just and equitable.

Dated: March 1, 2005

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

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