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12 Attorneys for Defendant Burger King Corporation

13 UNITED STATES DISTRICT COURT
14
15 NORTHERN DISTRICT OF CALIFORNIA

16 MIGUEL CASTANEDA on behalf of) **Case No. CV 08-4262 WHA**
himself and others similarly situated)
17) **DEFENDANT BURGER KING**
Plaintiff,) **CORPORATION'S ANSWER AND**
18) **AFFIRMATIVE DEFENSES**
vs.)
19) [CLASS ACTION]
BURGER KING CORPORATION and)
20 BURGER KING HOLDINGS, INC.,)
21 Defendants.)
22 _____)

23 Defendant Burger King Corporation, by and through the undersigned counsel, hereby
24 answers Plaintiffs' Amended Complaint, and alleges as follows:

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ANSWER TO INTRODUCTORY ALLEGATIONS

1
2 1. Burger King Corporation admits that it leases or subleases approximately 90
3 restaurants to franchisees in California. Burger King Corporation admits that Plaintiffs' proposed
4 class action alleges that Burger King Corporation has violated state and federal accessibility laws in
5 connection with the mobility impaired. The remaining allegations of the paragraph are denied.

6 2. Denied.

7 3. Admitted that the complaint seeks injunctive relief and statutory minimum damages.
8 The remaining allegations in this paragraph are denied.

9 4. Denied.

10 **ANSWER TO JURISDICTION AND VENUE ALLEGATIONS**

11 5. Admitted that Plaintiffs purport to assert such claims. The remaining allegations in
12 this paragraph are denied.

13 6. Denied.

14 7. Denied.

15 8. Admitted that venue is proper here with respect to Plaintiffs' ADA claims against
16 restaurants that are located in this district. The remaining allegations in this paragraph are denied.

17 **ANSWER TO INTRADISTRICT ASSIGNMENT ALLEGATIONS**

18 9. Admitted as to Plaintiffs' claims against restaurants located in Contra Costa County.
19 The remaining allegations in this paragraph are denied.

20 **ANSWER TO ALLEGATIONS CONCERNING PARTIES**

21 10. Defendant is without information or knowledge sufficient to form a belief as to the
22 truth of the allegations of paragraph 10 and on that basis denies them.

23 11. Defendant is without information or knowledge sufficient to form a belief as to the
24 truth of the allegations of paragraph 11 and on that basis denies them.

25 12. Defendant is without information or knowledge sufficient to form a belief as to the
26 truth of the allegations of paragraph 12 and on that basis denies them.

27 13. Defendant denies that it operates restaurants in California. The remainder of this
28 paragraph is admitted.

1 trademarked logo signage and the like. Admitted that Defendant had the contractual right to
2 disapprove any remodeling plans created by franchisees' professionals that did not comply with
3 Defendant's image or specifications. The remaining allegations in paragraph 32 are denied.

4 33. Admitted that in some instances, franchisees were contractually required to remodel
5 their stores in accordance with Defendant's current image, i.e., color scheme, lighting scheme,
6 trademarked logo signage and the like. Admitted that Defendant had the contractual right to
7 disapprove any remodeling plans created by franchisees' professionals that did not comply with
8 Defendant's image or specifications. The remaining allegations in paragraph 33 are denied.

9 34. Admitted.

10 35. Admitted that the MOD contains requirements for the operation, signage, and
11 equipment of a Burger King® restaurant. The remaining allegations in paragraph 35 are denied.

12 36. Admitted that the franchisee-operators of the BKLs are contractually required to
13 comply with all applicable laws and with certain standards proscribed by Defendant. The remaining
14 allegations in paragraph 36 are denied.

15 37. Admitted that Defendant provides certain training with respect to food service. The
16 remaining allegations in paragraph 37 are denied.

17 38. Admitted that Defendant conducts inspections of BKL Restaurants to determine
18 whether the restaurants are being operated in accordance with Burger King® system standards. The
19 remaining allegations in paragraph 38 are denied.

20 39. Defendant admits that some of the BKLs have undergone alterations that may have
21 affected the usability of part or all of such restaurant(s). The remaining allegations of the paragraph
22 are denied.

23 40. Defendant admits that some of the BKL Restaurants have undergone alterations,
24 structural repairs and/or additions since 1970. The remaining allegations of the paragraph are
25 denied.

26 41. Admitted that Defendant entered into a settlement agreement in 1997 with respect to
27 ADA claims that Patricia Day asserted as against some restaurants in the District of Columbia as set
28 forth in paragraph 41. Denied that the alleged violations parallel those alleged in this case. Denied

1 that by virtue of the Day complaint or settlement agreement, Defendant knew or should have known
2 that BKLs in California failed to comply with the ADA.

3 42. Defendant is without knowledge, recollection or information sufficient to form a
4 belief as to the truth of the allegations in paragraph 42 and therefore denies same.

5 43. Defendant is without knowledge or information sufficient to form a belief as to the
6 restaurants Castaneda claims to have visited and his allegations in that regard are therefore denied.
7 Admitted that Burger King Corporation leases or subleases the Pleasant Hill and Pittsburg
8 restaurants to franchisees who maintain and operate them.

9 44. Denied.

10 45. Denied.

11 46. Defendant is without knowledge or information sufficient to form a belief as to the
12 restaurants Corbett claims to have visited and his allegations in that regard are therefore denied.
13 Admitted that Burger King Corporation leases or subleases the El Cerrito and Oakland restaurants to
14 franchisees who maintain and operate them.

15 47. Denied.

16 48. Denied.

17 49. Defendant is without information or knowledge sufficient to form a belief as to the
18 restaurants Wellner claims to have visited and his allegations in that regard are therefore denied.
19 Admitted that Burger King Corporation leases or subleases the Fairfield restaurant to franchisees
20 who maintain and operate it.

21 50. Denied.

22 51. Denied.

23 52. Defendant is without information or knowledge sufficient to form a belief as to what
24 “other potential class members report,” and the allegations in paragraph 52 are therefore denied.

25 53. Denied.

26 **ANSWER TO FIRST CLAIM FOR RELIEF**
27 **(Americans with Disabilities Act)**

28 54. Defendant reincorporates its response by reference to its responses set forth in the

1 remainder of its answer.

2 55. Plaintiffs merely state legal conclusions which require no response and the provisions
3 of the ADA speak for themselves.

4 56. Admitted that Defendant leases or subleases the BKLs to franchisees.

5 57. Admitted.

6 58. Denied.

7 59. Denied.

8 60. Denied.

9 61. Denied.

10 **ANSWER TO SECOND CLAIM FOR RELIEF**
11 **(Unruh Civil Rights Act and the Unruh Act's Incorporation of the ADA)**

12 62. Defendant reincorporates its response by reference to its responses set forth in the
13 remainder of its answer.

14 63. Admitted that the franchisees that operate the BKL Restaurants are required to
15 comply with certain provisions of the Unruh Act. The remainder of this paragraph is denied.

16 64. Plaintiffs merely state legal conclusions which require no response and the Unruh Act
17 speaks for itself.

18 65. Plaintiffs merely state legal conclusions which require no response and the Unruh Act
19 speaks for itself.

20 66. Denied.

21 67. Denied.

22 68. Paragraph 68 contains no allegation, and therefore no response is due. Defendant
23 denies that Plaintiffs are entitled to judgment in their favor.

24 **ANSWER TO THIRD CLAIM FOR RELIEF**
25 **(California Disabled Persons Act and the CDPA's Incorporation of the ADA)**

26 69. Defendant reincorporates its response by reference to the responses set forth in the
27 remainder of its answer.

28 70. Admitted that the BKL Restaurants are places of public accommodations and/or

1 places to which the general public is invited. Admitted also that the franchisees that operate the
2 BKL Restaurants are required to comply with certain provisions of the CDPA. To the extent
3 Plaintiffs intend to allege something more, such allegation is denied.

4 71. Plaintiffs merely state legal conclusions which require no response and the CDPA
5 speaks for itself.

6 72. Plaintiffs merely state legal conclusions which require no response and the CDPA
7 speaks for itself.

8 73. Denied.

9 74. Denied.

10 75. Paragraph 75 contains no allegation, and therefore no response is due.

11 **ANSWER TO ALL ALLEGATIONS**

12 76. All other allegations not specifically admitted are hereby denied.

13 **AFFIRMATIVE DEFENSES**

14 **First Affirmative Defense**

15 Named Plaintiffs lack standing to challenge barriers in restaurants they did not visit prior to
16 the filing of the initial complaint.

17 **Second Affirmative Defense**

18 The putative class lacks standing to challenge barriers in restaurants some or all Plaintiffs did
19 not visit prior to the filing of the initial complaint.

20 **Third Affirmative Defense**

21 Plaintiffs' claims are moot.

22 **Fourth Affirmative Defense**

23 Plaintiffs' claims are barred by the applicable statutes of limitation.

24 **Fifth Affirmative Defense**

25 This Court lacks supplemental jurisdiction over Plaintiffs' state law claims.

26 **Sixth Affirmative Defense**

27 This Court lacks diversity jurisdiction over Plaintiffs' state law claims under the "local
28 controversy" exception to the CAFA, 28 U.S.C. § 1332(d)(4)(A).

1 **Seventh Affirmative Defense**

2 Plaintiffs have failed to state a claim under Unruh and the CDPA as against Defendant.

3 **Eighth Affirmative Defense**

4 Plaintiffs' claims are barred for failure to join necessary or indispensable parties, namely the
5 franchisees who maintain and operate the BKLs.

6 **Ninth Affirmative Defense**

7 Plaintiffs' claims are barred because, with respect to any particular architectural element of
8 any restaurant that departs from accessibility guidelines, the restaurants have provided "equivalent
9 facilitation" in the form of alternative designs and technologies that provide substantially equivalent
10 or greater access to and usability of the facility.

11 **Tenth Affirmative Defense**

12 Plaintiffs' claims are barred because the claimed violations are "de minimis," and non-
13 actionable because they do not materially impair Plaintiffs' use of an area for an intended purpose.

14 **Eleventh Affirmative Defense**

15 Plaintiffs' claims are barred because the barrier removal(s) Plaintiffs seek pursuant to the
16 ADA in restaurants built before January 26, 1993 are not "readily achievable," or easily
17 accomplishable and able to be carried out without much difficulty or expense within the meaning of
18 42 U.S.C. § 12181(9).

19 **Twelfth Affirmative Defense**

20 Plaintiffs' claims are barred because the modifications Plaintiffs seek are not "alterations"
21 within the meaning of the ADA or Title 24 and/or they do not trigger an "alteration" legal standard,
22 including because the modifications sought will be disproportionate in cost or cost in excess of 20%
23 of the entire "alteration."

24 **Thirteenth Affirmative Defense**

25 Plaintiffs' claims are barred because the alterations made by the franchisee operators of the
26 restaurants are sufficient in that they satisfy the "to the maximum extent feasible" standard. 28
27 C.F.R. § 36.402(a)(1); 42 U.S.C §12183(a)(2).

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1 **Fourteenth Affirmative Defense**

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

3 **Fifteenth Affirmative Defense**

4 Plaintiffs' claims that the restaurants were designed in violation of the ADA or Title 24 are
5 barred to the extent the restaurants were designed and constructed prior to the effective date of the
6 ADA, Title 24, or their regulations.

7 **Sixteenth Affirmative Defense**

8 Defendant has made good faith efforts to comply with the ADA, the Unruh Act, and the
9 California Disabled Persons Act, including providing appropriate alternative access.

10 **Seventeenth Affirmative Defense**

11 Plaintiffs have failed to mitigate their damages, if any.

12 **Eighteenth Affirmative Defense**

13 Plaintiffs' claims under the CDPA and Unruh Act are barred to the extent that they interfere
14 with Defendant's compliance with laws and regulations that are equally applicable to all persons.

15 **Nineteenth Affirmative Defense**

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

19 **Twentieth Affirmative Defense**

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

22 **Twenty-First Affirmative Defense**

23 Defendant is not legally responsible for property that is not within its possession, custody or
24 control.

25 WHEREFORE, Defendant Burger King Corporation respectfully requests that judgment be
26 entered in its favor and for an award of costs, attorneys' fees, and such other relief as the Court
27 deems appropriate.

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Respectfully submitted,

Dated: March 26, 2009

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