UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CARI SHIELDS, et al., Plaintiffs, v. WALT DISNEY PARKS AND RESORTS US, INC., et al., Defendants.	NO. CV 10-5810 DMG (FMOx) **ORDER Re: DISCOVERY MOTIONS**

The court has reviewed and considered all the briefing filed with respect to defendants' Motions: (1) for Protective Order; (2) to Re-Open Plaintiffs' Depositions; and (3) for Leave to Exceed Deposition Limit (collectively, "Motions") and accompanying Joint Stipulation ("Joint Stip."), each filed on July 6, 2011, and concludes that oral argument is not necessary to resolve these Motions. See Fed. R. Civ. P. 78; Local Rule 7-15; Willis v. Pac. Mar. Ass'n, 244 F.3d 675, 684 n. 2 (9th Cir. 2001, as amended Mar. 27, 2001).

BACKGROUND

On August 5, 2010, defendants removed the instant action from the Los Angeles County Superior Court. (See Notice of Removal of State Court Action Under 28 U.S.C. §§ 1331, 1441(b) and 1446 by Defendants at 1-2 & Exh. A at 1). On September 10, 2010, plaintiffs filed a First Amended Complaint ("FAC"), the operative complaint in the action. The FAC alleges that

defendants violated the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12131, et seq., the Unruh Act, Cal. Civ. Code § 51, et seq., and the California Disabled Persons Act ("CDPA"), Cal. Civ. Code § 54.1, et seq., through discriminatory practices against visually impaired individuals. (See FAC at 1-2 & 5-9). Plaintiffs allege that they were not able to benefit from the full use and enjoyment of defendants' theme parks, hotels, restaurants and website and were discriminated against on account of their disability, i.e., visual impairment. (Id. at 2).

On March 22, 2011, defendants filed a Motion for Protective Order, which the court denied without prejudice on May 9, 2011, for failure to comply with Local Rule 37. (Court's Order of May 9, 2011, at 1-3). The court ordered the parties to "comply strictly with Local Rule 37 in the event that any party believes that it may be necessary to file a discovery motion." (Id. at 3).

On June 20, 2011, defendants filed "Motions: (1) for Protective Order; (2) to Re-Open Plaintiffs' Depositions; (3) for Leave to Exceed Deposition Limit; and (4) for Visual Examinations of Plaintiffs Cari Shields and Amber Boggs Pursuant to Rule 35(B)," (collectively, "June 20, 2011 Motions"). On June 24, 2011, the court denied the June 20, 2011 Motions as untimely. (Court's Order of June 24, 2011, at 2).

On June 29, 2011, the district judge issued an Amended Scheduling Order, extending the discovery cut-off to August 30, 2011. Also on June 29, 2011, the district judge issued an Order Re Plaintiffs' Motion for Class Certification ("Court's Order Re: Class Certification"), certifying the following classes: (1) all visually impaired individuals considered to have a physical disability, as that term is defined in 42 U.S.C. § 12102 ("visually impaired individuals"), who have not been or upon visiting in the future will not be provided signage, menus or schedules in an alternative format, such as Braille and/or large print, or who were not read, in full, the menus at the theme parks, hotels, restaurants and shops at the theme parks ("signage class"); (2) all visually impaired individuals who have been deterred from visiting defendants' theme parks, hotels, restaurants and shops on account of there being no reasonable designated areas for service animals to defecate ("kennel class"); (3) all visually impaired individuals who have paid for, or who will upon future visits be required to pay for, an additional ticket for a companion or aide to assist the visually impaired individual in utilizing the accommodations at the theme parks ("companion ticket class");

(4) all visually impaired individuals who have experienced discrimination, or who will upon future visits experience discrimination, due to defendants' policy of excluding persons with disabilities, other than wheelchair users, from preferential locations to stand or sit during the parades at the theme parks ("parade class"); and (5) all visually impaired individuals who have been or who will in the future be unable to access one or more of the websites maintained by defendants and were or will be denied equal access to defendants' theme parks, hotels, restaurants and stores, as well as the numerous goods, services and benefits the websites offer ("website class"). (Court's Order Re: Class Certification at 43-44).

DISCUSSION

As an initial matter, it appears that the parties have again failed to comply with Local Rule 37. Under Local Rule 37-1, as part of the meet and confer process, the moving party is required to "specify the terms of the discovery order to be sought." Local Rule 37-2.1 implements this requirement by requiring, as part of the Joint Stipulation, that each party "state how it proposed to resolve the dispute over th[e] issue at the conference of counsel." Despite the Court's Order of May 9, 2011, which directed the parties to comply with Local Rule 37-2.1, (see Court's Order of May 9, 2011, at 4), the parties did not include the Local Rule 37-2.1 statement in defendants' portion of the Joint Stip. with respect to the first and second Motions, and in plaintiffs' portion of the Joint Stip. with respect to the second Motion. (See, generally, Joint Stip. at 1-35).

In addition, the parties discussed the issue of whether to re-open plaintiffs' depositions at a meet and confer session held on May 5, 2011, (Declaration of David H. Raizman in Support of Defendants' Motions ("Raizman Decl.") at ¶ 3), but they did not submit a declaration with the Joint Stip. regarding this meet and confer. (See Court's Order of May 9, 2011, at 3) ("The Joint Stipulation must include . . . a declaration that sets forth, in detail, the entire meet and confer process (i.e., when and where it took place, how long it lasted and the position of each attorney with respect to each disputed discovery request).").

Finally, the parties filed the same Joint Stip. – seven days after the district judge issued an order certifying five different classes – that the court denied on June 24, 2011, as untimely. (See Motions at 2; compare Joint Stip. at 1-35 with Joint Stipulation Regarding Defendants' Motions:

(1) for Protective Order; (2) to Re-Open Plaintiffs' Depositions; (3) for Leave to Exceed Deposition Limit; and (4) for Visual Examinations of Plaintiffs Cari Shields and Amber Boggs Pursuant to Rule 35(B), filed on June 20, 2011, at 1-35). Although defendants, in light of the class certification, narrowed their requested relief in the Motion for Protective Order and Motion for Leave to Exceed Deposition Limit, they did not renew the meet and confer process. The parties should have submitted a new joint stipulation that accurately discusses the issues that remain in dispute. Although the court was forced to sift through the Joint Stip., proposed orders and supplemental memoranda to decipher what issues are still in dispute, the court will, in this instance only, overlook the above-referenced deficiencies and address the Motions on their merits. **However, the parties are advised that all future discovery motions that fail to comply strictly with the Local Rules and/or Federal Rules of Civil Procedure will be rejected**.

I. MOTION FOR PROTECTIVE ORDER.

Following the meet and confer process, the parties narrowed the dispute to whether and how plaintiffs can contact visually impaired individuals who had written to defendants to complain about some aspect of their experience at the Disneyland Resort in California and the Walt Disney World Resort in Florida ("theme parks"). (See Joint Stip. at 2 & 4-5). However, since the class certification, defendants "narrowed" their protective order request only to "those third party guests who are not members of any certified class." (Defendants' Supplemental Memorandum in Support of Motion for Protective Order ("Defs.' Supp. Mem. Re: Protective Order") at 1; see Motion at 2). Defendants seek a protective order under which they would first send the third party visually impaired guests who complained about non-class issues ("complainants") an opt-out letter that gives the complainants 14 days to opt-out of being contacted by plaintiffs. (See [Proposed] Protective Order at ¶¶ 2-4 & Exh. A).

As an initial matter, defendants' narrowing of their protective order request to "only those third party guests who are not members of any certified class[,]" (Defs.' Supp. Mem. Re: Protective Order at 2), is vague and unworkable. Given the classes that were certified, (see Court's Order Re: Class Certification at 43-44), it is simply too difficult to determine at this time whether any third-party complainant would or would not be a member of the certified class. Also, even

assuming one could determine whether a person is or is not a member of one of the certified classes, it is likely that a particular complaint made by a visually impaired third party about an issue that was arguably not certified is reasonably calculated to lead to the discovery of admissible evidence. See Fed. R. Civ. P. 26(b)(1).

In any event, the court sees no need to require the opt-out letter requested by defendants under the circumstances here. Defendants assert that the unredacted guest correspondence contains highly sensitive information under established privacy law and the ADA, and they urge the court to follow the California Supreme Court's decision in Pioneer Electronics (USA), Inc. v. Superior Court (Pioneer), 40 Cal.4th 360, 370-75 (2007). (Joint Stip. at 2-3 & 5-8). This is a federal question case, and defendants may not rely on state privilege or privacy law to withhold information in a federal question case. See Religious Tech. Ctr. v. Wollersheim, 971 F.2d 364, 367 n. 10 (9th Cir. 1992) (per curiam) ("In federal question cases, the law of privilege is governed by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience.") (internal quotation marks and citation omitted); Heathman v. U.S. Dist. Court, 503 F.2d 1032, 1034 (9th Cir. 1974) ("[I]n federal question cases the clear weight of authority and logic supports reference to federal law on the issue of the existence and scope of an asserted privilege."); Fitzgerald v. Cassil, 216 F.R.D. 632, 635 (N.D. Cal. 2003) (explaining that in cases involving both state and federal claims, "the federal law of privilege applies to both the state and federal claims[]"); see also 6 Moore's Federal Practice § 26.47[4], at 26-334 (3d ed. 2011) ("[I]n federal question cases in which state law claims are also raised, any asserted privileges relating to evidence relevant to both state and federal claims are governed by federal law.") (internal citations omitted).

Moreover, defendants' assertion of a privacy interest in requiring an opt-out procedure fails to acknowledge Federal Rule of Civil Procedure 26(b)(1) which provides that a party "may obtain discovery regarding . . . the identity and location of persons who know of any discoverable matter." See also 8 Wright & Miller, Federal Practice and Procedure § 2013, at 282-83 (3d ed. 2010) ("[D]iscovery of the names and addresses of witnesses . . . ordinarily . . . should be regarded as

a matter of right.") (cases cited therein). This Rule would have little effect if defendants were permitted to prevent plaintiffs from using the contact information to contact potential witnesses.

Even assuming state privacy law applied, the court has no difficulty concluding that an opt-out letter is not required. As an initial matter, defendants did not attempt to apply the analytical framework for assessing claims of invasion of privacy under California's Constitution as articulated in Hill v. NCAA, 7 Cal.4th 1 (1994). (See, generally, Joint Stip. at 5-8). Unless a party satisfies the Hill criteria, there is no need for a court to conduct a balancing of interests to determine whether and if any limitations on communications with the third-party witnesses are necessary. See Pioneer, 40 Cal.4th at 371 ("Assuming that a claimant has met the . . . *Hill* criteria for invasion of a privacy interest, that interest must be measured against other competing or countervailing interests in a 'balancing test.'") (citations omitted) (italics in original); see also id. at 373 ("Pioneer's failure to demonstrate that its customers entertained a reasonable expectation of privacy . . . could end our inquiry as these elements are essential to any breach of privacy cause of action under *Hill* before any balancing of interests is necessary.") (italics in original).

In any event, it is clear that under Hill, there is no need to require an opt-out procedure in this case. The Hill court set forth the two types of recognized privacy interests under California law: "(1) interests in precluding the dissemination or misuse of sensitive and confidential information ('informational privacy'); and (2) interests in making intimate personal decisions or conducting personal activities without observation, intrusion, or interference ('autonomy privacy')." Hill, 7 Cal.4th at 35; see also Dep't of Fair Emp't & Hous. v. Superior Court, 99 Cal.App.4th 896, 903 (2002). The court looks

> at the specific kind of privacy interest involved, the nature and seriousness of the invasion, and any countervailing interests. If an obvious invasion of interest fundamental to personal autonomy is involved, then the compelling interest test applies. If the invasion is less central, or is in bona fide dispute, then a general balancing test applies.
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> Before applying either test, the court must determine whether the claim involves an insignificant or de minimis intrusion on a protected privacy

> interest. If the claim is an insignific ant or de minim is intrusion, then the requesting party is not required to provide an explanation or justification for the intrusion.

Dep't of Fair Emp't & Hous., 99 Cal.App.4th at 903 (citations omitted).

Defendants made no effort to establish that requiring an opt-out procedure is necessary to protect a person's "interests in making intima te personal decisions or conducting personal activities without observation, intrusion, or interference[.]" Hill, 7 Cal.4th at 35; see also Dep't of Fair Emp't & Hous., 99 Cal.App.4th at 903. Indeed, defendants made no effort to discuss "the specific kind of privacy interest involved, the nature and seri ousness of the invasion, and any countervailing interests."[1] Dep't of Fair Emp't & Hous., 99 Cal.App.4th at 903; see also Int'l Fed'n of Prof'l & Technical Eng'rs v. Superior Court, 42 Cal.4th 319, 339 (2007) ("Invasion of a privacy interest is not a violation of the state constitutional right to privacy if the invasion is justified by a competing interest.") (internal quotation marks and citation omitted).

In any event, the information defendants seek to protect constitutes, at most, informational privacy. "Where informational privacy is involv ed, the primary objective is to regulate the unnecessary collection and improper use of such information for dissemination." Dep't of Fair Emp't & Hous., 99 Cal.App.4th at 904. Here, there is no evidence that plaintiffs seek to disseminate or misuse the information requested. Indeed, plaintiffs stipulated to a protective order to limit the use of the information to this lawsuit. (See Protective Order of June 24, 2011, at 4-5).

With regard to the second element of Hill, the court is not persuaded that the third-party disabled customers had a reasonable expectation of privacy. There is no evidence that the third parties, by filing complaints regarding defendants' accommodation of their disabilities, expected

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[1] Defendants contend that the two privacy interests at stake are: (1) the interest of defendants' guests in protecting their identities and contact information from disclosure; and (2) these guests' interest in maintaining the confidentiality of the fact of their disabilities and any further private information about the nature or severity of their disabilities. (Joint Stip. at 5). However, defendants do not specify whether the interests constitute informational or autonomy privacy interests.

that their information would remain private[2]. (See, generally, Joint Stip. at 2-3 & 5-8). "If anything, these complainants might reasonably expect, and even hope, that their names and addresses would be given to any . . . class action plaintiff." Pioneer, 40 Cal.4th at 372. As plaintiffs state, defendants "would suggest that the filing of a formal complaint with a business concerning its inability and unwillingness to accommodate a disabled person as required by the ADA is not a public disclosure of the information and is done with an expectation that the information will be kept private. [Defendants] cite[] to no authority for that proposition." (Joint Stip. at 9). At most, the subject individuals have a lessened expectation of privacy where the intrusion is confined to a specific setting or limited context such as the instant case, in which plaintiffs seek information in the specific context of a class action disability discrimination case. See, e.g., Dep't of Fair Emp't & Hous., 99 Cal.App.4th at 904 (current and former apartment tenants have a lessened expectation of privacy because intrusion is confined to a specific setting).

"Finally, it is . . . questionable whether the information sought constitutes a serious invasion of privacy. The invasion of privacy in this case is not 'sufficiently serious in [its] nature, scope, and actual or potential impact to constitute an egregious breach of the social norms underlying the privacy right.'" Dep't of Fair Emp't & Hous., 99 Cal.App.4th at 904 (quoting Hill, 7 Cal.4th at 37) (brackets in original); see Hernandez v. Hillsides, Inc., 47 Cal.4th 272, 287 (2009) (Plaintiff's expectation of privacy in the legally protected privacy interest must be reasonable, and the intrusion must be "so serious in nature, scope, and actual or potential impact as to constitute an egregious breach of the social norms.") (internal quotation marks and citations omitted). Given

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[2] Indeed, it appears that defendants themselves do not treat this information as private, as the complaint letters and emails were forwarded up the corporate chain and passed on – unredacted – to people on a "for your information" basis, even though the recipients made no decision as to how the complaints were handled. (See Joint Stip. at 9-10; Declaration of Lee Wm. Atkinson at ¶ 7 & Exh. 3). Defendants assert that they shared the guest complaints within their entities "for business reasons, including to allow Defendants' employees[] to understand the experiences of guests with disabilities and consider modifications of practices and policies[,]" (Defs.' Supp. Mem. Re: Protective Order at 4), but defendants fail to explain why the complainants' identifying information is necessary for such purposes. (See, generally, id. at 4-5).

the protective order that was entered by the court, the likelihood of improper disclosure of the subject information is virtually non-existent.

In short, it is clear that defendants have failed to meet the Hill criteria for establishing that an opt-out letter is required in this case. However, assuming defendants had met the Hill criteria, the court has balanced the third parties' privacy interests against the need for the information sought by plaintiff classes. Given that the third-party complainants have, at most, an insignificant privacy interest in the complaints they submitted to defendants, see Dep't of Fair Emp't & Hous., 99 Cal.App.4th at 903 ("If the claim is an insignificant or de minimis intrusion, then the requesting party is not required to provide an explanation or justification for the intrusion."), the court is persuaded that the Protective Order of June 24, 2011, is sufficient to protect whatever privacy interests may exist, i.e., an opt-out letter or notice is not required. See Sandres v. Corrections Corp. of Am., 2011 WL 475068, at *2 (E.D. Cal. 2011) (explaining that "[t]hough personal identifying information is entitled to some privacy protection, disclosing it is not a serious invasion of privacy[,]" and "[i]n class action cases, [c]ontact information regarding the identity of potential class members is generally discoverable, so that the lead plaintiff may learn the names of other persons who might assist in prosecuting the case[]") (internal quotation marks and citation omitted); Putnam v. Eli Lilly and Co, 508 F.Supp.2d 812, 814 (C.D. Cal. 2007) ("[T]he Court finds that plaintiff's needs here outweigh the concerns of defendant. Plaintiff has shown a legitimate need for the requested information . . . . The need is especially compelling here where the information to be disclosed concerns not disinterested third parties, but rather potential plaintiffs themselves. This information must be disclosed to enable plaintiff to proceed; a protective order can strike the appropriate balance between the need for the information and the privacy concerns.").

II. MOTION TO RE-OPEN PLAINTIFFS' DEPOSITIONS.

Defendants seek to re-open plaintiffs' depositions to examine them regarding alleged newly developed facts and newly asserted allegations and relief. (Joint Stip. at 22). Specifically, defendants contend that since plaintiffs' depositions in late 2010 and early 2011, plaintiffs have made additional visits to the theme parks, which have resulted in plaintiffs lodging additional

complaints regarding their experiences at the theme parks. (Id.). Defendants also assert that plaintiffs expanded their allegations and request for relief since their depositions and since filing the FAC. (Id.).

Under Fed. R. Civ. P. 30(a)(2)(A)(ii), a party must obtain leave of court to depose a person who has already been deposed in the case if the parties have not stipulated to the deposition. The factors in Fed. R. Civ. P. 26(b)(2) that the court must consider are: (1) whether the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive; (2) whether the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or (3) whether the burden or expense of the proposed discovery outweighs its likely benefits, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

A. Plaintiff Cari Shields.

Plaintiffs have agreed to re-open the deposition of Cari Shields ("Ms. Shields") for the limited purpose of deposing her concerning her subsequent trip to one of the theme parks on March 17, 2011. (Joint Stip. at 24). Under the circumstances, the court will allow Ms. Shields's deposition to be re-opened for the limited purpose of questioning her regarding all visits to the theme parks from February 1, 2011, to the filing date of this Order. The deposition shall not exceed three hours, exclusive of breaks and meal periods, and shall be taken at the time and place designated by plaintiffs' counsel.

B. Plaintiffs Amber Boggs and Teresa Stockton.

Under the circumstances, the court will not allow a re-opening of the depositions of plaintiffs Amber Boggs ("Ms. Boggs") and Teresa Stockton ("Ms. Stockton"). See Dixon v. Certainteed Corp., 164 F.R.D. 685, 690 (D. Kan. 1996) ("Absent some showing of a need or good reason for doing so, the court will generally not require a deponent to appear for a second deposition.") (internal quotation marks and citation omitted); Graebner v. James River Corp., 130 F.R.D. 440, 441 (N.D. Cal. 1989, as amended Apr. 10, 1990) ("[R]epeat depositions are disfavored, except in certain circumstances[,]" such as "long passage of time with new evidence, [or] new theories

added to the complaint[.]"); 7 Moore's Federal Practice § 30.05[1][c], at 30-34 (3d ed. 2011) ("Courts generally disfavor second depositions, and absent a showing of need or good reason, a court generally will not require a deponent to appear for a second deposition."). "Plaintiffs have stipulated that they would not introduce into evidence or otherwise seek to rely upon any visits by Ms. Boggs or Ms. Stockton to Disney properties since their original depositions." (Joint Stip. at 24). Indeed, defendants initially "offered to forego [plaintiffs'] depositions," in part based on this stipulation. (See id. at 23).

Defendants' contention that plaintiffs have asserted new allegations that are not contained in the FAC since their original depositions, (see Joint Stip. at 26-29), is unpersuasive. Questions propounded in discovery requests, allegations in a motion for class certification and/or information revealed during or after a mediation are insufficient to constitute new "claim allegations," i.e., they are insufficient to expand the allegations in the operative pleading. A party can discover any nonprivileged information that is relevant to the claims or defenses of any other party. Fed. R. Civ. P. 26(b)(1). Relevant information does not have to be admissible so long as it appears calculated to lead to the discovery of admissible evidence. Id. Simply because a discovery request is relevant to a party's claim or defense or is calculated to lead to the discovery of admissible evidence does not mean that the claim or requested relief in the operative complaint has been expanded. Also, this court cannot decide whether the operative complaint should be amended or whether plaintiffs should be barred from introducing evidence that, as defendants claim, expands the claims in the operative complaint.

Here, the allegations were clearly set forth in the operative complaint at the time of the original depositions, as the FAC was filed on September 10, 2010, (see FAC at 1 & 5-9), and the original depositions occurred in November and December 2010 and January 2011. (Joint Stip. at 25). Defendants therefore had ample opportunity to obtain the information during the original depositions. See Fed. R. Civ. P. 26(b)(2)(C)(ii) & 30(a)(2).

III. MOTION FOR LEAVE TO EXCEED DEPOSITION LIMIT.

Defendants seek an order allowing them to take two additional depositions beyond the 10-deposition limit provided by Fed. R. Civ. P. 30(a)(2)(A). (See Motions at 2-3; Defendants'

Supplemental Memorandum in Support of Motion for Leave to Exceed Deposition Limit ("Defs.' Supp. Mem. Re: Exceed Depo. Limit") at 2-4). Defendants seek to depose Julie Johnson ("Ms. Johnson") and Chris Snyder ("Mr. Snyder"). (Defs.' Supp. Mem. Re: Exceed Depo. Limit at 2-4). Under the circumstances, the court is persuaded that defendants have shown good cause for the two additional depositions. See Fed. R. Civ. P. 30(a)(2) (a party seeking to take more than 10 depositions must first obtain leave of the court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(2)); Lloyd v. Valley Forge Life Ins. Co, 2007 WL 906150, at *2 (W.D. Wash. 2007) (citing Bell v. Fowler, 99 F.3d 262, 271 (8th Cir. 1996)) (A party may be granted leave to exceed the 10-deposition limit if it makes "a particularized showing of why the discovery is necessary."); (Joint Stip. at 18-19) (defendants stating that Ms. Johnson drove Ms. Shields to the Disneyland Resort and may have been with Ms. Shields when she tried to access the first row of the parade viewing area, and that Mr. Snyder visited the theme parks with Ms. Shields and Ms. Boggs and discussed the parks' allegedly poor accommodations for the blind); (Defs.' Supp. Mem. Re: Exceed Depo. Limit at 3-4)(defendants stating that Ms. Johnson observed Ms. Shields's attempt to access the first row of the disabled parade viewing area and therefore has unique information relating to the parade class claims, and that Mr. Snyder is a potential class member and Disneyland Resort annual pass-holder). However, each deposition shall not exceed four hours, exclusive of breaks and meal periods, and shall be taken at the time and place designated by plaintiffs' counsel.

This Order is not intended for publication. Nor is it intended to be included in or submitted to any online service such as Westlaw or Lexis.

Based on the foregoing, IT IS ORDERED THAT:

1. Defendants' Motion for Protective Order **(Document No. 140)** is **denied**.

2. Defendants' Motion to Re-Open Plaintiffs' Depositions **(Document No. 140)** is **granted in part and denied in part**. Defendants may take the deposition of Ms. Shields for the limited purpose of questioning her regarding all visits to defendants' theme parks from February 1, 2011, to the filing date of this Order. Ms. Shields's deposition shall not exceed three hours, exclusive of breaks and meal periods, and shall be taken at the time and place designated by plaintiffs'

counsel. Ms. Shields's deposition shall be completed no later than **August 25, 2011**. Defendants' Motion to Re-Open Plaintiffs' Depositions is **denied** in all other respects. With respect to Ms. Boggs and Ms. Stockton, plaintiffs may not introduce into evidence or otherwise seek to rely upon any visits by Ms. Boggs or Ms. Stockton to Disney properties since their original depositions. (See Joint Stip. at 24).

3. Defendants' Motion to Exceed Deposition Limit **(Document No. 140)** is **granted** as limited by defendants in Defs.' Supp. Mem. Re: Exceed Depo. Limit. Defendants may take two additional depositions beyond the 10-deposition limit set forth in Fed. R. Civ. P. 30(a)(2)(A). The two additional depositions are limited to Julie Johnson and Chris Snyder. The depositions of Ms. Johnson and Mr. Snyder shall be completed no later than **August 30, 2011**, and shall be limited to no more than four hours for each deposition, exclusive of breaks and meal periods. Each deposition shall be taken at the time and place designated by plaintiffs' counsel. Defendants' Motion to Exceed Deposition Limit is **denied** in all other respects.

4. With respect to the conduct of the depositions, the parties should note the following. Any objection to a deposition question must be stated concisely and in a nonargumentative and nonsuggestive manner. Fed. R. Civ. P. 30(c)(2). Counsel should state objections on the record and then permit the witness to answer the question. Eggleston v. Chicago Journeymen Plumbers, 657 F.2d 890, 902 (7th Cir. 1981), cert. denied, 455 U.S. 1017 (1982). Counsel must refrain from instructing a deponent not to answer questions during a deposition.[3] Under Rule 30(c)(2) of the Federal Rules of Civil Procedure, an attorney "may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(3)." Fed. R. Civ. P. 30(c)(2) [4] provides the "exclusive grounds for instructing a deponent not answer." Shapiro v. Paul Revere Life Ins. Co, 1997 WL 601430, at *1 (N.D. Cal. 1997); Detoy v. City and County of San Francisco, 196 F.R.D. 362, 367 (N.D. Cal.

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[3] An attorney may not instruct a witness not to answer a question on the ground that it has been asked and answered, is vague and ambiguous or is irrelevant.

[4] Effective December 1, 2007, as part of the general restyling of the Federal Rules of Civil Procedure, Rule 30(d)(1) was integrated into Rule 30(c)(2).

2000) ("Counsel shall refrain from instructing a witness not to answer, except as provided in Rule 30[(c)(2).]").

Dated this 5th day of August, 2011.

/s/
Fernando M. Olguin
United States Magistrate Judge