

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JOSE ESCOBEDO.

Plaintiff.

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SAFWAN HUSSAIN, dba Primo Mini Mart; KENNETH A. BOCCHINI, Trustee of the Kenneth A. and Susan L. Bocchini Family Trust; and Susan L. BOCCHINI, Trustee of the Kenneth A. and Susan L. Bocchini Family Trust.

## Defendants.

1:15-cv-434 --- BAM

## ORDER DENYING MOTION FOR STAY

(Doc. 8)

On March 19, 2015, Plaintiff Jose Escobedo (“Plaintiff”) filed a complaint seeking relief pursuant to the Americans with Disabilities Act (“ADA”), California Civil Code § 51 (“Unruh Civil Rights Act”), and the California Health and Safety Code § 19959. (Doc. 1). Plaintiff is a disabled person and alleges that Defendants Kenneth Bocchini and Susan Bocchini (“Defendants”) are the operators of a business located in Fresno, California (“the property”). Plaintiff contends that when he visited the property, he encountered barriers that interfered with his ability to use and enjoy the goods and services offered. He seeks an injunction, declaratory relief, statutory damages, attorney’s fees and costs.

1           On April 28, 2015, Defendants filed a Motion to Stay requesting an early evaluation  
2 conference pursuant to California Civil Code Section 55.54. (Doc. 8). Specifically, Defendants  
3 contend they have made several modifications to the property and that the changes render the  
4 property ADA compliant. Plaintiff filed an opposition to the stay on May 4, 2015. (Doc. 9).  
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6           Under California law, the Construction–Related Accessibility Standards Compliance Act,  
7 Cal. Civ.Code §§ 55.51–55.54, “entitles some defendants in construction-related accessibility  
8 suits to a stay and [an early] evaluation conference for the lawsuit.” *O'Campo v. Chico Mall, LP*,  
9 758 F. Supp. 2d 976, 983 (E.D. Cal. 2010) (citing Cal. Civ.Code § 55.54(b)(1)). However,  
10 section 55.54 's provisions are preempted by the ADA and cannot be applied to plaintiff's ADA  
11 claim. *See, Daubert v. City of Lindsey*, 37 F. Supp. 3d 1168, 1179 (E.D. Cal., Aug. 8, 2014);  
12 *Moreno v. Vohra*, 2014 WL 2721770, at \*1 (E.D. Cal. June 16, 2014); *Moreno v. Town &*  
13 *Country Liquors*, 2012 WL 2960049, at \*4 (E.D.Cal. July 19, 2012); *see also Hubbard v.*  
14 *SoBreck, LLC*, 554 F.3d 742, 744 (9th Cir.2009) ( “[F]or federal law to preempt state law, it is not  
15 necessary that a federal statute expressly state that it preempts state law.” (citation omitted)).  
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17           Further, federal courts which have considered this issue have found that, under *Erie Rail*  
18 *Co. v. Tompkins*, 304 U.S. 64 (1938), and related cases, a federal court should not apply the  
19 procedures of California Civil Code section 55.54 to supplemental state law claims because its  
20 provisions are not outcome determinative. See *Daubert*, 37 F. Supp. 3d at 1179-1180; *Moreno v.*  
21 *Vohra*, 2014 WL 2721770 at \*1; *Lamark v. Nuredin Noorallah Laiwalla, et al*, 2013 WL  
22 3872926, at \*1 (E.D. Cal., July 25, 2013); *Moreno*, 2012 WL 2960049, at \*4; *O'Campo*, 758  
23 F.Supp.2d at 985; *Oliver v. Hot Topic, Inc.*, 2010 WL 4261473, at \*1 (S.D.Cal. July 27, 2010).  
24 Accordingly, Defendants' request for an early intervention conference is denied.  
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26           Finally, although the court may also stay an action under its inherent power “to control the  
27 disposition of the causes on its docket with economy of time and effort for itself, for counsel, and  
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1 for litigants", *Landis v. N. Am. Co.*, 299 U.S. 248, 254, 57 S.Ct. 163, 81 L.Ed. 153 (1936),  
2 defendants have not made a sufficient showing that a stay would be appropriate in this case. Thus,  
3 defendants' motion for a stay is DENIED.

4 Notwithstanding the above, the Court is amenable to conducting a settlement conference  
5 with the parties to attempt to resolve this litigation in its early stages if the parties determine this  
6 would be beneficial. If after meeting and conferring, the parties would like to schedule a  
7 settlement conference, they should contact Courtroom Deputy Harriet Herman at 559-499-5788  
8 to arrange a mutually agreeable time.

9  
10 The Clerk of the Court is directed to serve this order on Defendants via United States mail  
11 at the following address:

12  
13 Kenneth and Susan Bocchini  
14 2208 Mesa Verde Drive  
Milpitas, California

15 IT IS SO ORDERED.

16 Dated: May 6, 2015

17 /s/ *Barbara A. McAuliffe*  
UNITED STATES MAGISTRATE JUDGE

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