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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DARREN GILBERT,

Plaintiff,

v.

HARKIRAT SINGH SAMRA dba BILL'S
SPORT & BAIT SHOP, et al.,

Defendants.

Case No. 1:22-cv-00552-ADA-BAM

**ORDER VACATING FINDINGS AND
RECOMMENDATIONS REGARDING
PLAINTIFF'S MOTION FOR DEFAULT
JUDGMENT (Doc. 19)**

**ORDER TO SHOW CAUSE RE
SUPPLEMENTAL JURISDICTION**

Deadline: February 3, 2022

On May 6, 2022, Plaintiff Darren Gilbert initiated this action against Defendants Harkirat Singh Samra dba Bill's Sport & Bait Shop and Fahmi Abdo Alsumeri. (Doc. 1.) The Complaint asserts claims for injunctive relief under the Americans with Disabilities Act of 1990 ("ADA") and the California Health and Safety Code and a claim for statutory damages under California's Unruh Civil Rights Act ("Unruh Act"). (*Id.*) Defendants have not appeared in this action, and default has been entered. (Doc. 6.)

On October 24, 2022, Plaintiff filed a motion for default judgment against Defendants based only on his claims arising under the ADA and the Unruh Act.¹ (Doc. 19.) On December 2, 2022, this Court issued findings and recommendations recommending that Plaintiff's motion for

¹ Plaintiff's motion appeared to abandon his California Health and Safety Code claim. (*See generally* Doc. 19-1.)

1 default judgment be granted in part. (Doc. 21.) The findings and recommendations remain
2 pending, and have not been accepted, rejected, or otherwise modified.

3 Having further considered the matter based upon the recent Ninth Circuit opinion in *Vo v.*
4 *Choi*, this Court will vacate the findings and recommendations and order Plaintiff to show cause
5 why the Court should not decline to exercise supplemental jurisdiction over Plaintiff’s Unruh Act
6 claim. *See* 28 U.S.C. § 1367(c); *Vo v. Choi*, 49 F.4th 1167 (9th Cir. 2022) (holding the district
7 court properly declined to exercise supplemental jurisdiction in a joint Unruh Act and ADA case).

8 In the Unruh Act, a state law cause of action expands the remedies available in a private
9 action. California, in response to the resulting substantial volume of claims asserted under the
10 Unruh Act and the concern that high-frequency litigants may be using the statute to obtain
11 monetary relief for themselves without accompanying adjustments to locations to assure
12 accessibility to others, enacted filing restrictions designed to address that concern. *Arroyo v.*
13 *Rosas*, 19 F.4th 1202, 1211–12 (9th Cir. 2021). These heightened pleading requirements apply to
14 actions alleging a “construction-related accessibility claim,” which California law defines as “any
15 civil claim in a civil action with respect to a place of public accommodation, including but not
16 limited to, a claim brought under Section 51, 54, 54.1, or 55, based wholly or in part on an alleged
17 violation of any construction-related accessibility standard.” Cal. Civ. Code § 55.52(a)(1).

18 Moreover, California imposes additional limitations on “high-frequency litigants,” defined
19 as plaintiffs who:

20 filed 10 or more complaints alleging a construction-related accessibility violation
21 within the 12-month period immediately preceding the filing of the current
complaint alleging a construction-related accessibility violation.

22 Cal. Civ. Proc. Code § 425.55(b)(1). The definition of “high-frequency litigant” also extends to
23 attorneys who represent “as attorney of record 10 or more high-frequency litigant plaintiffs in
24 actions that were resolved within the 12-month period immediately preceding the filing of the
25 current complaint alleging a construction-related accessibility violation...” Cal. Civ. Proc. Code
26 § 425.55(b)(2). “High-frequency litigants” are subject to a special filing fee and further
27 heightened pleading requirements. *See* Cal. Gov. Code § 70616.5;
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1 Cal. Civ. Proc. Code § 425.50(a)(4)(A). By enacting restrictions on the filing of construction-
2 related accessibility claims, California has expressed a desire to limit the financial burdens
3 California’s businesses may face for claims for statutory damages under the Unruh Act. *See*
4 *Arroyo v. Rosas*, 19 F.4th at 1206-07, 1212. The Ninth Circuit has also expressed “concerns
5 about comity and fairness” by permitting plaintiffs to circumvent “California’s procedural
6 requirements.” *Vo v. Choi*, 49 F.4th at 1171. Plaintiffs who file these actions in federal court
7 evade these limits and pursue state law damages in a manner inconsistent with the state law’s
8 requirements. *See generally, Arroyo v. Rosas*, 19 F.4th at 1211–12; *Vo v. Choi*, 49 F.4th at 1171-
9 72.

10 In an action over which a district court possesses original jurisdiction, that court “shall
11 have supplemental jurisdiction over all other claims that are so related to claims in the action
12 within such original jurisdiction that they form part of the same case or controversy under Article
13 III of the United States Constitution.” 28 U.S.C. § 1367(a). Even if supplemental jurisdiction
14 exists, however, district courts have discretion to decline to exercise supplemental jurisdiction.
15 28 U.S.C. § 1367(c). Such discretion may be exercised “[d]epending on a host of factors”
16 including “the circumstances of the particular case, the nature of the state law claims, the
17 character of the governing state law, and the relationship between the state and federal claims.”
18 *City of Chicago v. Int’l Coll. of Surgeons*, 522 U.S. 156, 173 (1997).

19 According to the filings with this Court, Plaintiff Gilbert appears to be a high-frequency
20 litigant, with at least 80 cases filed in this district within the 12-month period from May 6, 2021
21 to May 6, 2022.

22 For these reasons, IT IS HEREBY ORDERED as follows:

- 23 1. The findings and recommendations issued on December 2, 2022 (Doc. 21), are
24 VACATED;
- 25 2. Plaintiff is ORDERED to show cause, in writing, no later than **February 3, 2022**, why
26 the Court should not decline to exercise supplemental jurisdiction over Plaintiff’s
27 Unruh Act claim;
- 28 3. In responding to the show cause order, Plaintiff is further ORDERED to:

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- a. identify the amount of statutory damages Plaintiff seeks to recover; and
 - b. provide declarations from Plaintiff and Plaintiff’s counsel, signed under penalty of perjury, providing all facts necessary for the Court to determine if each is a “high-frequency litigant;” and
4. Plaintiff is cautioned that the failure to respond may result in a recommendation to dismiss of the entire action without prejudice. Fed. R. Civ. P. 41(b) (stating that dismissal is warranted “[i]f the plaintiff fails to ... comply with ... a court order”); *see also Hells Canyon Pres. Council v. U.S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005). Further, an inadequate response will result in the Court recommending that supplemental jurisdiction over Plaintiff’s Unruh Act claim be declined and that the Unruh claim be dismissed pursuant to 28 U.S.C. § 1367(c).

IT IS SO ORDERED.

Dated: January 18, 2023

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE