

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSE TRUJILLO,

Plaintiff,

v.

ELVIA HERNANDEZ, individually and
dba TAQUERIA GUADALAJARA; JOSE
OSCAR HERNANDEZ, individually and
dba TAQUERIA GUADALAJARA,

Defendants.

Case No. 1:22-cv-00643-ADA-BAM

**ORDER VACATING FINDINGS AND
RECOMMENDATIONS REGARDING
PLAINTIFF'S MOTION FOR DEFAULT
JUDGMENT (Doc. 13)**

**ORDER TO SHOW CAUSE RE
SUPPLEMENTAL JURISDICTION**

Deadline: February 10, 2023

On May 27, 2022, Plaintiff Jose Trujillo initiated this action against Defendants Elvia Hernandez, individually and dba Taqueria Guadalajara, and Jose Oscar Hernandez, individually and dba Taqueria Guadalajara. (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. 7.)

On September 28, 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. 11.) On November 18, 2022, this Court issued findings and recommendations recommending that Plaintiff's motion

¹ Plaintiff's motion appeared to abandon his California Health and Safety Code claim. (*See generally* Doc. 11-1.)

1 for default judgment be granted in part. (Doc. 13.) 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:

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

23 Cal. Civ. Proc. Code § 425.55(b)(1). The definition of “high-frequency litigant” also extends to
 24 attorney who represent “as attorney of record 10 or more high-frequency litigant plaintiffs in
 25 actions that were resolved within the 12-month period immediately preceding the filing of the
 26 current complaint alleging a construction-related accessibility violation” Cal. Civ. Proc.
 27 Code § 425.55(b)(2). “High-frequency litigants” are subject to a special filing fee and further
 28 heightened pleading requirements. *See* Cal. Gov. Code § 70616.5; Cal. Civ. Proc. Code §

1 425.50(a)(4)(A). By enacting restrictions on the filing of construction-related accessibility
2 claims, California has expressed a desire to limit the financial burdens California's businesses
3 may face for claims for statutory damages under the Unruh Act. *See Arroyo v. Rosas*, 19 F.4th at
4 1206-07, 1212. The Ninth Circuit has also expressed "concerns about comity and fairness" by
5 permitting plaintiffs to circumvent "California's procedural requirements." *Vo v. Choi*, 49 F.4th at
6 1171. Plaintiffs who file these actions in federal court evade these limits and pursue state law
7 damages in a manner inconsistent with the state law's requirements. *See generally, Arroyo v.*
8 *Rosas*, 19 F.4th at 1211-12; *Vo v. Choi*, 49 F.4th at 1171-72.

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

18 According to the filings with this Court, it appears that Plaintiff Trujillo has filed at least
19 10 cases in this district within the 12-month period from May 27, 2021, to May 27, 2022, and
20 more than 20 cases in the last two years.

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

- 22 1. The findings and recommendations issued on November 18, 2022 (Doc. 13), are
23 VACATED;
- 24 2. Plaintiff is ORDERED to show cause, in writing, no later than **February 10, 2023**,
25 why the Court should not decline to exercise supplemental jurisdiction over Plaintiff's
26 Unruh Act claim;
- 27 3. In responding to the show cause order, Plaintiff is further ORDERED to:
28 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 19, 2023

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE