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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL McCUNE,

Plaintiff,

No. CIV S-10-2207 FCD GGH PS

vs.

SATNAM SINGH,

Defendant.

FINDINGS AND RECOMMENDATIONS

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Presently before the court is defendant’s motion for a stay of proceedings and early evaluation conference. Plaintiff has filed objections, referring to a prior order issued by Judge Karlton in a similar case.

The case referred to by plaintiff, O’Campo v. Chico Mall, LP, No. Civ.S. 10-1105 LKK CMK, directly addresses a similar request by defendant in another ADA case. The Construction-Related Accessibility Standards Compliance Act (“Act”) permits some defendants to obtain a stay and an early evaluation conference. Cal. Civ. Code §§ 55.51-55.54. The ADA has no similar provision. The undersigned agrees with Judge Karlton’s analysis that the Act is preempted in regard to plaintiff’s ADA claim, and in regard to the supplemental state law claims, a settlement conference and mandatory stay of proceedings are not outcome determinative under Guaranty Trust Co. v. York, 326 U.S. 99 (1945). Therefore, plaintiff cannot be ordered to

1 participate in an early evaluation conference. If and when plaintiff requests attorney's fees,  
2 however, plaintiff's unwillingness to resolve the case early will be a point of concern. Referral to  
3 the court's Voluntary Dispute Resolution Program is optional but recommended.

4 Accordingly, IT IS RECOMMENDED that:

5 1. Defendant's motion to stay and request for early evaluation conference, filed  
6 September 30, 2010, be denied.

7 2. Defendant file an answer within 28 days of an order adopting these findings  
8 and recommendations.

9 These findings and recommendations are submitted to the United States District  
10 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within  
11 fourteen (14) days after being served with these findings and recommendations, any party may  
12 file written objections with the court and serve a copy on all parties. Such a document should be  
13 captioned "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the  
14 objections shall be served and filed within fourteen (14) days after service of the objections. The  
15 parties are advised that failure to file objections within the specified time may waive the right to  
16 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

17 DATED: 10/26/2010

18 /s/ Gregory G. Hollows  
U. S. MAGISTRATE JUDGE

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