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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SUSAN JOHNSON,

Case No. C-09-02886 JCS

Plaintiff,

**ORDER DENYING MOTION TO
DISMISS WITHOUT PREJUDICE AND
VACATING HEARING [Docket No. 8]**

v.

SAMUDRA PRIYA DIAS,

Defendant.

_____ /

United States District Court
For the Northern District of California

In this case, involving disability access, Plaintiff asserts claims under the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12101 *et seq.*, and state law. The parties have consented to the jurisdiction of a magistrate judge pursuant to 28 U.S.C. § 626(c). Defendant has filed a motion to dismiss, arguing, *inter alia*, that the accommodation sought by Plaintiff is not “readily achievable” under the ADA. Having reviewed Defendant’s motion and supporting declaration, the Court concludes that it is based on evidence going to the merits of the case. Rule 12(b)(6) of the Federal Rules of Civil Procedure does not allow the Court to consider extrinsic evidence. Nor will the Court consider the motion as one for summary judgment, under Rule 56, because there has not been an adequate period in which to conduct discovery.

Accordingly, Defendant’s motion is DENIED without prejudice. The hearing scheduled for **March 12, 2010** is vacated. Further, the parties are referred to mediation, to occur within 90 days of the date of this Order.

IT IS SO ORDERED.

Dated: February 24, 2010



JOSEPH C. SPERO
United States Magistrate Judge