

1 \*E-Filed: December 4, 2013\*

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7 NOT FOR CITATION  
8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION

11 CECIL SHAW,

No. C12-04687 HRL

12 Plaintiff,

**ORDER DENYING DEFENDANT  
LORENA SOTOMAYOR'S MOTION  
FOR SUMMARY JUDGMENT**

13 v.

14 KAPTAN GHIMIRE, ET AL.,

**[Re: Docket No. 59]**

15 Defendants.  
\_\_\_\_\_ /

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17 Plaintiff Cecil Shaw sued defendants pursuant to the Americans with Disabilities Act (ADA)  
18 and related California law for alleged ADA violations at a liquor store and small Mexican restaurant  
19 within the store. The claims were resolved by a consent decree between all parties. *See* Order on  
20 Consent Decree, dkt. 36. Defendant Lorena Sotomayor, who owned the restaurant, now moves for  
21 summary judgment. Shaw opposes the motion for summary judgment. However, because this  
22 action has already been finally adjudicated by the entry of the consent decree, the Court will  
23 construe this as a motion for relief from judgment pursuant to Fed. R. Civ. P. 60(b). *See Rufo v.*  
24 *Inmates of Suffolk County Jail*, 502 U.S. 367, 378 (concluding that a consent decree is subject to the  
25 rules generally applicable to other judgments and decrees, including Rule 60(b)). The matter is  
26 deemed suitable for determination without oral argument, and the December 3, 2013 hearing is  
27 vacated. *See* Civ. L.R. 7-1(b). Upon consideration of the moving and responding papers, the  
28 motion is denied.

1 Sotomayor argues that Shaw did not have standing to bring his ADA claim against her  
2 because her restaurant had already closed by the time he filed the complaint. And because Shaw did  
3 not have standing, the Court did not have subject matter jurisdiction, and the consent decree is  
4 ineffective as against Sotomayor.

5 “Pursuant to Rule 60(b)(4), a litigant may attack a judgment as void due to lack of subject  
6 matter jurisdiction . . . .” *Wages v. IRS*, 915 F.2d 1230, 1234 (9th Cir. 1990). “[S]tanding . . .  
7 pertain[s] to a federal court’s subject matter jurisdiction under Article III . . . .” *White v. Lee*, 227  
8 F.3d 1214, 1242 (9th Cir. 2000). “To establish standing to pursue injunctive relief, which is the  
9 only relief available to private plaintiffs under the ADA, [a plaintiff] must demonstrate a real and  
10 immediate threat of repeated injury in the future.” *Chapman v. Pier 1 Imports*, 631 F.3d 939, 946  
11 (9th Cir. 2011) (footnote omitted) (internal quotation marks omitted). Here, there was no threat of  
12 repeated future injury because Sotomayor’s restaurant was closed before Shaw even filed the  
13 complaint. Thus, Shaw did not have standing to bring an ADA claim against Sotomayor.

14 However, Shaw still had a valid ADA claim against the owners of the liquor store, as well as  
15 a valid claim for damages under California law against Sotomayor. Correspondingly, the Court had  
16 original jurisdiction over Shaw’s ADA claims against the owners of the liquor store, as well as  
17 supplemental jurisdiction over Shaw’s state law claims against Sotomayor because they formed  
18 “part of the same case or controversy.” 28 U.S.C. § 1367(a).

19 Sotomayor presents no reason why it was improper for the Court to exercise supplemental  
20 jurisdiction, and the consent decree Sotomayor signed specifically includes a jurisdictional  
21 statement providing that the Court has supplemental jurisdiction over Shaw’s California law claims.  
22 Accordingly, Sotomayor’s motion is denied. The clerk shall close this file.

23 **IT IS SO ORDERED.**

24 Dated: December 3, 2013

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27 HOWARD R. LLOYD  
28 UNITED STATES MAGISTRATE JUDGE

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10 **Counsel are responsible for distributing copies of this document to co-counsel who have not**  
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