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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ROBERT KALANI,
Plaintiff,
v.
STARBUCKS CORPORATION,
Defendant.

Case No. 13-CV-00734-LHK

**ORDER DENYING DEFENDANT'S
MOTION TO STAY ENFORCEMENT
OF MANDATORY INJUNCTIONS**

Re: Dkt. No. 115

Before the Court is Defendant Starbucks Corporation’s (“Defendant”) Motion to Stay Enforcement of Mandatory Injunctions (“Motion”). ECF No. 115. Plaintiff filed an Opposition (“Opp.”) to Defendant’s Motion, ECF No. 116, and Defendant filed a Reply. ECF No. 120. The Court finds this matter appropriate for resolution without oral argument pursuant to Civil Local Rule 7–1(b) and VACATES the hearing currently set for February 25, 2016. Having considered the parties’ submissions, the relevant law, and the record in this case, the Court DENIES Defendant’s Motion to stay enforcement of the injunction.¹

¹ Defendant’s Motion seeks to stay only the injunctive relief awarded against Defendant. The parties have separately stipulated to the amount of a supersedeas bond to stay enforcement of the monetary relief awarded against Defendant. *See* ECF No. 128.

1 Justice’s analysis of the provision. *Id.*, at 9–11.

2 Plaintiff additionally argued that Defendant violated the ADA through the orientation of
3 the Store’s interior accessible tables, which force individuals in wheelchairs to sit facing the wall,
4 with their backs to the interior of Defendant’s Store. *See, e.g.*, July 28, 2015 Findings of Fact and
5 Conclusions of Law, at 1–2. Following a bench trial, the Court determined, in relevant part, that
6 this effectively denied Plaintiff the choice to participate in the “Starbucks environment” or “coffee
7 house experience.” *Id.*, at 13. The Court concluded that Defendant, “through the orientation and
8 positioning of its interior accessible tables, has afforded Plaintiff an opportunity to both participate
9 in and benefit from the abovementioned goods and services that was ‘not equal to that afforded to
10 other individuals.’ 42 U.S.C. § 12182(b)(1)(A)(ii). This constitutes discrimination under Title III
11 of the ADA.” *Id.*, at 14. The Court similarly concluded that Defendant violated 42 U.S.C.
12 §§ 12182(b)(1)(A)(iii) and 12182(b)(1)(B). *Id.*, at 14–17.

13 The Court therefore awarded Plaintiff injunctive relief requiring Defendant to bring the
14 Store’s point of sale counter, exterior seating area, restroom, and interior accessible table into
15 compliance with the ADA and the 2010 ADA Standards. *See* February 25, 2015 Order, at 22; July
16 28, 2015 Findings of Fact and Conclusions of Law, at 19. Specifically, the Court awarded
17 injunctive relief as set forth below:

18 Defendant is further ORDERED to make the [Store] accessible to Plaintiff as follows:

- 19
- 20 • The Store’s point of sale counter must comply with the construction standards
21 set forth in the 2010 [ADA Standards].
 - 22 • The Store’s exterior seating area must comply with the 2010 ADA Standards.
 - 23 • The Store’s restroom must comply with the 2010 ADA Standards.
 - 24 • At least one interior accessible table shall be provided, in compliance with all
25 applicable regulations, guidelines, and statutes, such that an individual in a
26 wheelchair can be seated facing the interior of the Store with his or her back
27 to the wall.

28 *See* ECF No. 130 (Amended Judgment).

As discussed in more detail below, Defendant’s Motion seeks to stay enforcement of this
injunction, and argues that Defendant raised substantial legal issues that will be considered anew

1 on appeal. Motion, at 1. Defendant further argues that enforcement of the injunction “could moot
2 the entirety of the appeal resulting in [Defendant’s] inability to pursue an appeal in this case,” and
3 that Plaintiff “will suffer no harm by the granting of a stay.” *Id.*; *see also* ECF No. 120 (Reply), at
4 2–4. Plaintiff opposes Defendant’s Motion, and argues primarily that enforcement would not
5 moot the appeal, that Plaintiff continues to suffer harm in the absence of enforcement, and that
6 Defendant has failed to demonstrate that there are substantial unresolved legal questions
7 warranting a stay. *Opp.*, at 1–3.

8 **II. LEGAL STANDARD**

9 Defendant seeks to stay enforcement of the injunction under Federal Rule of Civil
10 Procedure 62(c), which provides that a court “may suspend, modify, restore, or grant an injunction
11 on terms for bond or other terms that secure the opposing party’s rights” while “an appeal is
12 pending from . . . [a] judgment that grants, dissolves or denies an injunction.” A stay of
13 enforcement of an injunction pending appeal “is not a matter of right. It is instead an exercise of
14 judicial discretion that is dependent upon the circumstances of the particular case.” *Lair v.*
15 *Bullock*, 697 F.3d 1200, 1203 (9th Cir. 2012) (citing *Nken v. Holder*, 556 U.S. 418, 433 (2009))
16 (alterations and quotation marks omitted). “Judicial discretion in exercising a stay is to be guided
17 by the following legal principles, as distilled into a four factor analysis in *Nken*: ‘(1) whether the
18 stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the
19 applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will
20 substantially injure the other parties interested in the proceeding; and (4) where the public interest
21 lies.’” *Id.* (citing *Nken*, 556 U.S. at 434). Of the four *Nken* factors, the first two “are the most
22 critical” in determining whether a stay should be granted. *Id.* at 1204. “The party requesting a
23 stay bears the burden of showing that the circumstances justify an exercise of [the Court’s]
24 discretion.” *Id.* at 1203.

25 **III. DISCUSSION**

26 Defendant seeks a stay of enforcement of the injunction issued against it. The Court
27 therefore considers the four *Nken* factors to determine whether a stay is warranted.

1 despite the fact that they were moveable.² *Id.* at 1008–09.

2 *Chapman*’s conclusion that a “moveable” obstruction can constitute an actionable barrier
 3 when it is not temporary or transitory undercuts Plaintiff’s contention that it has raised a
 4 substantial case for relief on the merits. As was the case in *Chapman*, the record here makes clear
 5 that the “moveable” obstructions at issue are not transitory or temporary. *See, e.g.*, February 25,
 6 2015 Order, at 12–13 (discussing instructions from “corporate” as to placement of sale and
 7 promotional items on counter); *id.*, at 18–19 (moveable trashcan would *always* interfere with
 8 restroom access as configured). Indeed, the Court’s February 25, 2015 Order noted that the
 9 reasoning of the district court case that later resulted in the Ninth Circuit *Chapman* decision was
 10 persuasive with regard to § 36.211(b) and “moveable” obstructions. *See* February 25, 2015 Order,
 11 at 10–11 (citing *Chapman v. Pier 1 Imports (U.S.), Inc.*, 870 F. Supp. 2d 995, 1006 (E.D. Cal.
 12 2012)). That district court’s reasoning was in relevant part affirmed by the Ninth Circuit.
 13 *Chapman*, 779 F.3d at 1006–09.

14 Defendant’s Motion fails to address *Chapman*, and instead rests primarily on the
 15 contention that, in contrast to the Court’s ruling that the non-temporary objects here are not
 16 exempt from liability, three other district court cases “have found the same or similar [moveable]
 17 objects to fall under the exception” in 28 C.F.R. § 36.211(b). Motion, at 5. However, the handful
 18 of cases cited by Defendant were decided before the Ninth Circuit issued its opinion in *Chapman*,
 19 and thus provide little support for Defendant’s position. Accordingly, because *Chapman*’s
 20 guidance is consistent with the decision in the instant case, the Court concludes that Defendant has
 21 not shown a substantial case for relief on this ground.

22 Defendant’s second argument—that a stay is warranted because Defendant will argue to
 23 the Ninth Circuit that the orientation of Defendant’s interior accessible tables does not violate the
 24 ADA—fares no better. Defendant’s Motion does not contend that the Court applied the wrong

26 ² In contrast, the Ninth Circuit reversed the district court’s grant of summary judgment with regard
 27 to a point of sale counter claim, because items were rarely on the counter and employees
 28 “promptly remove[d] the obstructing items.” *Id.* at 1009–10 (quotation marks omitted).

1 statute, overlooked a controlling or conflicting regulation, failed to appreciate a split of legal
2 authority, or ruled in the face of contrary authority. Rather, Defendant simply argues with no
3 meaningful analysis that the question is a difficult one upon which the Ninth Circuit has not
4 previously ruled. Motion, at 6; Reply, at 4.

5 Although Defendant appears to be correct that the Ninth Circuit has not yet had occasion to
6 consider the highly specific question of whether forcing a disabled individual to sit with his back
7 to the interior of a coffee shop prevents his full and equal enjoyment of the goods and services
8 offered by that coffee shop, that fact does not automatically establish the existence of a substantial
9 case for relief on the merits. The very breadth of the ADA means that, in many cases, ADA
10 principles will be applied to individual circumstances that have not previously been the subject of
11 an appeal. *Cf. Guifu Li v. A Perfect Franchise, Inc.*, No. 5:10-CV-01189-LHK, 2011 WL
12 2293221, at *3 (N.D. Cal. June 8, 2011) (“The fact that Defendants are requesting a review of the
13 district court’s decision does not automatically mean they have raised a ‘serious legal question’ on
14 appeal.”). The ADA is not a new statute, and the Court decided Plaintiff’s claim with the benefit
15 of reasoned decisions from the Ninth Circuit in analogous situations. *See, e.g.*, July 28, 2015
16 Findings of Fact and Conclusions of Law, at 12–14 (citing *Antoninetti v. Chipotle Mexican Grill,*
17 *Inc.*, 643 F.3d 1165, 1173 (9th Cir. 2010)). Without more, Defendant’s contention that the
18 particular legal question at issue is sufficiently difficult or novel to weigh in favor of a stay is
19 unpersuasive.

20 Furthermore, while Defendant frames the issue decided by the Court broadly (“whether
21 orientation or position of seating in a public establishment constitutes discrimination”), Motion, at
22 6, the actual decision of the Court was far less sweeping. The Court did not rule that a particular
23 seating orientation in all coffee shops, or even in Defendant’s Store, violated the ADA as a matter
24 of law. Rather, the Court’s conclusions were reached after fact-finding at a bench trial concerning
25 the particular environment and goods and services provided by Defendant’s Store. *See* July 28,
26 2015 Findings of Fact and Conclusions of Law, at 11–16. Given that the Court’s decision does
27 not establish a categorical rule of law, but rather applied the ADA to a particular set of facts, the

1 Court is unpersuaded that Defendant has established that a substantial case for relief on the merits
2 exists based merely on the fact that the Ninth Circuit has not previously reviewed the identical fact
3 pattern.

4 Defendant’s third and final contention—that its expert’s declaration raised a triable issue as
5 to several claims—merits little discussion. Motion, at 6–7. The Court excluded the portions of
6 the expert declaration upon which Defendant now relies as “improper legal conclusions,” as well
7 for “lacking factual support.” February 25, 2015 Order, at 5–6. Such evidentiary rulings are
8 reviewed for abuse of discretion, *Wong v. Regents of Univ. of California*, 410 F.3d 1052, 1060
9 (9th Cir. 2005), and Defendant has not articulated how it will satisfy that high burden on appeal.
10 Accordingly, Defendant has not shown that a substantial case for relief on the merits exists as a
11 result of disagreement with the Court’s evidentiary rulings.

12 In summary, because Defendant has not established that there is a substantial case for relief
13 on the merits—much less a likelihood of success—this factor does not weigh in favor of a stay.

14 **B. Irreparable Injury to Defendant Absent a Stay**

15 Defendant contends that it will be irreparably harmed if a stay is not granted because
16 enforcement of the injunction “will essentially moot the entire appeal pending before the Ninth
17 Circuit Court of Appeals.” Motion, at 7–8. Mootness of an appeal can constitute irreparable
18 harm. *See, e.g., Artukovic v. Rison*, 784 F.2d 1354, 1356 (9th Cir. 1986) (where petitioner sought
19 to stay extradition pending appeal, the “possibility of irreparable injury . . . is evident:
20 [petitioner’s] appeal will become moot and will be dismissed since the extradition will have been
21 carried out”). Here, however, Defendant simply asserts that mootness is a concern, Motion, at 7–
22 8, but makes no meaningful attempt to explain how or why enforcement of the injunction would
23 actually preclude the Ninth Circuit from reviewing this Court’s decision. Conclusory assertions
24 are insufficient to meet Defendant’s burden to show that a stay is warranted. *See Lair*, 697 F.3d at
25 1203 (party seeking stay bears burden to justify exercise of court’s discretion).

26 In any case, Defendant’s claim that enforcement of the injunction would eliminate the
27 Ninth Circuit’s ability to grant relief is unconvincing. A major thrust of Defendant’s arguments

1 opposing summary judgment was that the obstacles challenged by Plaintiff were “moveable.” *See*,
2 *e.g.*, February 25, 2015 Order at 9–11. Accordingly, Defendant can move those objects back if the
3 Ninth Circuit reverses this Court’s judgment as to the point of sale counter, the interior accessible
4 table, and the exterior tables. Defendant contends that compliance with the injunction regarding
5 the restroom is different in kind, because “[Defendant] might be required to make structural
6 changes” to replace the moveable trash can with a recessed trash can, which cannot be undone
7 without additional expense. Reply, at 2. In addition to being stated equivocally (changes “*might*
8 be required”), the alleged costs and difficulties in complying with the Court’s injunction are
9 supported only by a conclusory declaration of Defendant’s attorney stating that “[s]tructural
10 changes to the restroom will be costly, and could require closing the store.” ECF No. 119, ¶ 1.
11 Such conclusory assertions do not satisfy Defendant’s burden to establish the possibility of
12 irreparable harm, and the Court finds that this factor does not weigh in favor of a stay.

13 **C. Injury to Plaintiff If a Stay Is Granted**

14 Defendant argues that Plaintiff will not suffer any harm if the injunction is stayed because
15 Plaintiff lives approximately 137 miles away from the Store. Motion, at 8. Defendant’s argument
16 in this regard simply ignores the Court’s previous rulings that “Plaintiff has put forth evidence
17 demonstrating his intent to return to [Defendant’s Store] in Campbell.” February 25, 2015 Order,
18 at 20; *see also* July 28, 2015 Findings of Fact and Conclusions of Law, at 6–7 (concluding that
19 Plaintiff demonstrated “a likelihood of future injury” where Plaintiff testified that he was
20 frequently in the area, had visited the Store “four or five” times, and planned to return). The fact
21 that Plaintiff may be injured less frequently because he lives 137 miles away does not negate the
22 fact that Plaintiff will likely be injured by Defendant’s violations of the ADA when he returns to
23 the Store.

24 Defendant further contends that Plaintiff will not be injured if a stay is granted because
25 “there are approximately 20 other Starbucks stores in the area that [Plaintiff] can [patronize] while
26 this appeal is pending.” Motion, at 8. As Plaintiff correctly notes, however, conspicuously absent
27 from Defendant’s Motion is any claim (let alone any evidence) that Defendant’s 20 other stores

1 are accessible to Plaintiff, or even that they “do not suffer from the very same accessibility
2 problems found at the [Store].” Opp., at 2. Such speculative arguments fall well short of
3 satisfying Defendant’s burden to show that the balance of hardships tips in Defendant’s favor or
4 that this factor weighs in favor of a stay.³

5 **D. Where the Public Interest Lies**

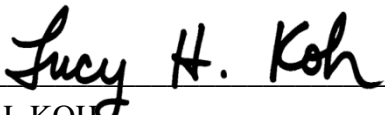
6 Defendant entirely fails to address whether or how the public interest would be served by
7 staying enforcement of the injunction. The Court is aware of no reason why the public interest
8 would be served by staying the injunction on this record, however, and finds that this factor does
9 not weigh in favor of a stay.

10 **IV. CONCLUSION**

11 As set forth above, Defendant has failed to meet its burden to demonstrate that any of the
12 *Nken* factors warrant exercise of the Court’s discretion to stay enforcement of the injunction
13 pending appeal. Accordingly, for the foregoing reasons, Defendant’s Motion to Stay Enforcement
14 of Mandatory Injunctions is DENIED.

15 **IT IS SO ORDERED.**

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17 Dated: February 22, 2016

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LUCY H. KOH
United States District Judge

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25 _____
26 ³ Defendant also argues that Plaintiff’s claims of harm are not credible, as Plaintiff has brought at
27 least 67 ADA lawsuits in California. Reply, at 4. The relevance of that fact is, at best, unclear.
28 Defendant does not explain why the number of Plaintiff’s suits (each of which may or may not be
meritorious in its own right) affects whether he is harmed by Defendant’s violations of the ADA
in *this* lawsuit.