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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SCOTT JOHNSON,
Plaintiff,
v.
GDRR PROPERTIES, LLC, et al.,
Defendants.

Case No. 16-CV-05839-LHK

**ORDER DENYING APPLICATION FOR
STAY AND EARLY NEUTRAL
EVALUATION CONFERENCE**

Re: Dkt. No. 9

Plaintiff Scott Johnson brings this action against Defendants GDRR Properties, LLC (“GDRR”) and Kickz, Inc. (“Kickz”) for violation of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12101 *et seq.*, and the California Unruh Civil Rights Act, Cal. Civil Code §§ 51 *et seq.* Plaintiff alleges that he visited the Kickz store, on property owned by GDRR, on several occasions and encountered barriers to access in the form of a door with “a pull bar handle that requires tight grasping to operate” and a lack of parking spaces reserved for people with disabilities. ECF No. 1 (“Compl.”) ¶ 22. Before the Court is Defendants’ request to stay the action and refer the parties to early neutral evaluation pursuant to California Civil Code § 55.54. ECF No. 9.

Under California law, the Construction-Related Accessibility Standards Compliance Act,

1 Cal. Civ. Code §§ 55.51–55.54, “entitles some defendants in construction-related accessibility
2 suits to a stay and [an early] evaluation conference for the lawsuit.” *O’Campo v. Chico Mall, LP*,
3 758 F. Supp. 2d 976, 983 (E.D.Cal.2010) (citing Cal. Civ. Code § 55.54(b)(1)). However, as
4 Plaintiff points out in his opposition to Defendants’ request for a stay, several courts in the Ninth
5 Circuit have held that § 55.54(b)’s stay and early neutral evaluation provisions cannot be applied
6 to ADA claims because those procedures are preempted by the ADA. *See O’Campo v. Chico Mall*,
7 *LP*, 758 F. Supp. 2d 976, 984-85 (E.D. Cal. 2010) (holding that § 55.54(b) does not apply to ADA
8 claims because those requirements impose “additional procedural hurdles to a plaintiff bringing a
9 claim under the ADA.”); *Lamark v. Laiwalla*, 2013 WL 3872926, at *1 (E.D. Cal. July 25, 2013)
10 (same); *Moreno v. Town & Country Liquors*, 2012 WL 2960049, at *4 (E.D. Cal. July 19, 2012).
11 Additionally, several courts in the Ninth Circuit have held that § 55.54 cannot be applied to state
12 law claims brought in federal court under the rule of *Erie Railroad Company v. Tompkins*, 304
13 U.S. 64 (1938), that federal courts should apply federal procedural law. *See Oliver v. Hot Topic*,
14 *Inc.*, 2010 WL 4261473, at *1 (S.D. Cal. July 27, 2010) (“§ 55.54(d) is not likely to change the
15 end result of the litigation because it simply dictates a mechanism for scheduling the case.”);
16 *O’Campo v. Chico Mall, LP*, 758 F.Supp.2d 976, 984-85 (E.D. Cal. 2010) (same); *Moreno v.*
17 *Town and Country Liquors*, 2012 WL 2960049, *4 (E.D. Cal. 2012) (same); *Lamark v. Laiwalla*,
18 2013 WL 3872926, at *1 (E.D. Cal. 2013) (same).

19 Defendants do not respond to these arguments in their reply brief, and the Court finds
20 *O’Campo*, *Moreno*, *Oliver*, and *Lamark* persuasive. As pointed out in *O’Campo*, the Ninth Circuit
21 has held that “for federal law to preempt state law, it is not necessary that a federal statute
22 expressly state that it preempts state law.” *Hubbard v. SoBreck, LLC*, 554 F.3d 742 (9th Cir.
23 2009). Instead, it is enough that § 55.54 “actually conflicts” with the ADA by imposing a
24 procedural hurdle that the ADA does not require. *Id.* Similarly, an early evaluation conference
25 does not implicate “substantive rights” under California law and does not “so intimately affect
26 recovery or non-recovery [that] a federal court . . . should follow State law.” *Guaranty Trust Co. v.*
27 *York*, 326 U.S. 99 (1945). Thus, under the *Erie* doctrine the Court must follow applicable federal

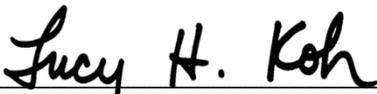
1 procedural law, which does not provide for a stay and early evaluation conference in these
2 circumstances, but instead provides for a revised schedule pursuant to General Order No. 56 of the
3 Northern District of California. *See also* ECF No. 5 (outlining case schedule pursuant to General
4 Order No. 56).

5 The Court also finds that a stay based on the Court’s inherent equity powers is not
6 warranted. Under General Order No. 56, a party seeking to adjust the schedule set forth under
7 General Order No. 56 must “file a Motion for Administrative Relief pursuant to Civil Local Rule
8 7-11.” General Order No. 56, at 2. Defendants have not filed such a motion. Additionally, other
9 than a vague statement about “protracted litigation and/or incurring excessive attorney[’]s fees and
10 costs,” Reply at 3, Defendants have not identified any prejudice that would result from following
11 case schedule set forth by General Order No. 56. Therefore, Defendants have not demonstrated
12 that a stay is warranted in this case.

13 For the foregoing reasons, Defendants’ request for a stay and early evaluation conference
14 pursuant to California Civil Code § 55.54 is DENIED.

15 **IT IS SO ORDERED.**

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17 Dated: December 20, 2016

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20 LUCY H. KOH
21 United States District Judge
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