

1 On July 2, 2010, the Magistrate Judge issued a Scheduling Order following a Case
2 Management Conference. (ECF No. 16).

3 On September 10, 2010, PFS filed the Motion for Stay. (ECF No. 17). PFS contends:

4 Monetary damages are not available to Plaintiff Kohler under the ADA.
5 Instead, the only relief available under the ADA is injunctive relief.... PFS has
6 already begun remodeling the subject McDonald's restaurant. When that
7 remodeling project is finished, on or about April 1, 2011, it should be undisputed
8 that the subject restaurant will be fully accessible to the disabled and fully
9 compliant with the anti-discrimination provisions in the ADA.... At that time,
10 this Court may choose, if it wishes, to dismiss Plaintiff Kohler's ADA claim,
11 refuse to continue exercising pendent jurisdiction over his remaining state law
12 claims, and order this entire lawsuit dismissed....

13 Because of the likelihood that Plaintiff Kohler's ADA claim will be moot
14 by April 1, 2011, it makes no sense to allow him to propound any discovery
15 specific to the issue of injunctive relief under the ADA. Therefore, this Court
16 should exercise its inherent right to control litigation before it to maximize
17 judicial efficiency and minimize unnecessary use of judicial resources by issuing
18 an order partially staying all discovery related in any way to injunctive relief
19 available to Plaintiff Kohler for any purported violations by Defendants of the
20 ADA....

21 In the alternative, ... this Court can and should issue an order now
22 completely staying all discovery in this lawsuit until April 1, 2011....

23 Finally, PFS anticipates that Plaintiff Kohler may file a motion for
24 summary judgment/adjudication as to his ADA claim within the next six months
25 in order to obtain a permanent injunction against PFS. Given the strong
26 likelihood that by April 1, 2011 the remodeling of the McDonald's restaurant at
27 issue in this lawsuit will be complete, and the need for an injunctive order
28 requiring PFS to take any further action to ensure that its restaurant is
barrier-free will be eliminated, this Court can and should issue a stay now
barring any and all dispositive motions by Plaintiff Kohler requesting issuance
of such an injunction.

29 *Id.* at 2-3.

30 On October 4, 2010, Plaintiff filed an opposition to the Motion for Stay. (ECF No. 18).

31 Plaintiff contends:

32 Implementing the proposed stay would result in undue prejudice to the plaintiff
33 and increase the length of litigation.... Kohler would be prejudiced by not
34 having evidence of the restaurant's physical state before the remodel occurred.
35 This evidence is not only critical to his state law damage claims, which are
36 predicated upon state and federal disabled access laws that were present during
37 his visits, but establishes his standing to bring the original ADA claim in the first
38 place.... By staying litigation in general (discovery in particular) while the
restaurant is remodeled, Kohler will be forced to watch helplessly as PFS
destroys the very evidence that he needs to establish his damage claims and the
disputed ADA violations....

39 *Id.* at 3-4. Plaintiff "request[s] that the court stay the defense from destroying evidence (i.e.,

1 remodeling its facility) until plaintiff's expert can conduct a Rule 34 site inspection." *Id.* at
2 5.

3 On October 8, 2010, PFS filed a reply brief. (ECF No. 19). PFS states that "PFS will
4 stipulate that even if the requested stays are granted by this Court, [Plaintiff's counsel] may,
5 upon agreement with PFS concerning an appointment time, immediately send an ADA
6 accessibility expert to the subject McDonald's for an inspection of the premises." *Id.* at 4.

7 RULING OF THE COURT


8 A scheduling order "may be modified only for good cause." Fed. R. Civ. P. 16(b)(4).
9 In considering whether a party has shown good cause for modifying a scheduling order, a court
10 considers "the moving party's reasons for seeking modification," "the diligence of the party
11 seeking the amendment," and "the existence or degree of prejudice to the party opposing the
12 modification." *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992).

13 After considering the submissions of the parties, the Court finds that, based upon the
14 current record, PFS has failed to show good cause for modifying or staying the Scheduling
15 Order. Counsel are required to "promptly and in good faith meet and confer with regard to all
16 discovery disputes." Scheduling Order ¶ 5, ECF No. 16; *see also* S.D. Cal. Civ. L.R. 26.1.a;
17 *cf.* 28 U.S.C. § 1927. All motions to compel discovery are referred to the Magistrate Judge.
18 *See* S.D. Cal. Civ. L.R. 26.1.e.

19 CONCLUSION

20 IT IS HEREBY ORDERED that the Motion for Issuance of an Order (1) Declaring a
21 Partial or Complete Stay as to Discovery Related in Any Way to Injunctive Relief Available
22 to Plaintiff Arising from Violation of the Americans with Disabilities Act; and (2) Declaring
23 a Complete Stay as to Motions Related in Any Way to Injunctive Relief Available to Plaintiff
24 Arising from Violation of the Americans with Disabilities Act is DENIED. (ECF No. 17).

25 DATED: November 23, 2010

26 
27 **WILLIAM Q. HAYES**
28 United States District Judge