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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

KATHLEEN HOLT, *individually and on behalf of all others similarly situated*,
Plaintiff,
v.
NOBLE HOUSE HOTELS & RESORT, LTD; and DOES 1 TO 25,
Defendants.

Case No.: 17cv2246-MMA (BLM)

ORDER DENYING DEFENDANT'S MOTION FOR STAY; AND

[Doc. No. 31]

DENYING AS MOOT DEFENDANT'S EX PARTE APPLICATION FOR ORDER SHORTENING TIME FOR HEARING

[Doc. No. 32]

Plaintiff Kathleen Holt ("Plaintiff"), individually and on behalf of all others similarly situated, filed this putative class action Complaint against Defendant Noble House Hotels & Resort, LTD ("Noble House") alleging causes of action for violations of California's False Advertising Law ("FAL"), California Business and Professions Code sections 17500, *et seq.*; California's Unfair Competition Law ("UCL"), California Business and Professions Code sections 17200, *et seq.*; and California's Consumers Legal Remedy Act ("CLRA"), California Business and Professions Code sections 1750, *et seq.* Doc. No. 35 ("FAC"). Noble House moves to stay the case pending the outcome

1 of two “test cases” raising nearly identical issues. Doc. No. 31-1 (“Mtn.”). Plaintiff
2 opposes a stay. Doc. No. 34 (“Oppo.”). The Court, in its discretion, decides the matters
3 on the papers submitted and without oral argument, pursuant to Civil Local Rule 7.1.d.1.
4 For the following reasons, the Court **DENIES** Noble House’s motion for a stay.

5 **BACKGROUND**

6 The claims in Plaintiff’s First Amended Complaint (“FAC”) arise out of a 3.5%
7 surcharge of \$1.38, which was added to the balance of her bill on August 6, 2017, at
8 Acqua California Bistro in San Diego, California, which is owned by Noble House.
9 FAC, ¶¶ 24, 26. Plaintiff alleges that Noble House is misleading the public by
10 advertising prices for food and drinks in its menus and then adding the surcharge to the
11 balance of the bill total at checkout “when it is too late to make an informed decision
12 about the increased total bill.” FAC, ¶¶ 27-30. Plaintiff alleges Noble House “purposely
13 added this surcharge instead of raising the prices on its menu in order to mislead [and
14 deceive] consumers into thinking that their meal would cost less than it actually does.”
15 FAC, ¶¶ 25, 29. Accordingly, Plaintiff asserts causes of action for violations of the FAL,
16 UCL, and CLRA. *See generally*, FAC.

17 Since early 2017, Plaintiff’s counsel has filed fifteen class action complaints,
18 including the instant case, in San Diego Superior Court against restaurants that add
19 surcharges to their patrons’ bills.¹ Mtn. at 2. Each of these cases allege that these
20 surcharges are *per se* unlawful and that the individual restaurants failed to adequately
21 disclose the surcharge. *Id.* at 2-3. Noble House removed the instant action to this Court.
22 Doc. No. 1. Thereafter, the fourteen remaining cases were related and reassigned to San
23 Diego Superior Court Judge Taylor. Doc. Nos. 31-4; 31-5; 31-6. On March 19, 2018,
24 Judge Taylor ordered two cases, *Fischer v. El Camino Hospitality* and *Vespi v. Galaxy*
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27 ¹ The Court **GRANTS** Noble House’s request to judicially notice the operative test case complaints and
28 related filings from San Diego Superior Court. *See Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d
741, 746 n.6 (9th Cir. 2006) (stating that court filings in other tribunals and other matters of public
record are appropriate for judicial notice).

1 *Taco*, be designated as test cases, and that the remaining cases be stayed pending
2 resolution of the test cases. Doc. No. 31-8.

3 LEGAL STANDARD

4 “A district court has discretionary power to stay proceedings in its own court under
5 *Landis v. North American Co.*” *Lockyer v. Mirant Corp.*, 398 F.3d 1093, 1109 (9th Cir.
6 2005) (citing *Landis v. North American Co.*, 299 U.S. 248, 254 (1936)). “The power to
7 stay a case is ‘incidental to the power inherent in every court to control the disposition of
8 the causes on its docket with economy of time and effort for itself, for counsel, and for
9 litigants.’” *Halliwell v. A-T Sols.*, No. 13-CV-2014-H (KSC), 2014 WL 4472724, at *7
10 (S.D. Cal. Sept. 10, 2014) (quoting *Landis*, 299 U.S. at 254). A district court may stay a
11 case “pending resolution of independent proceedings which bear upon the case,” even if
12 those proceedings are not “necessarily controlling of the action before the court.” *Leyva*
13 *v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863-64 (9th Cir. 1979). However,
14 “[o]nly in rare circumstances will a litigant in one cause be compelled to stand aside
15 while a litigant in another settles the rule of law that will define the rights of both.”
16 *Landis*, 299 U.S. at 255.

17 In determining whether to grant a stay pursuant to *Landis*, courts in the Ninth
18 Circuit weigh the “competing interests which will be affected by the granting or refusal to
19 grant a stay,” including “the possible damage which may result from the granting of a
20 stay, the hardship or inequity which a party may suffer in being required to go forward,
21 and the orderly course of justice measured in terms of the simplifying or complicating of
22 issues, proof, and questions of law which could be expected to result from a stay.” *See*
23 *Lockyer*, 398 F.3d at 1110 (quoting *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir.
24 1962)). “If there is even a fair possibility that the stay will work damage to someone
25 else, the stay may be inappropriate absent a showing by the moving party of hardship or
26 inequity.” *Dependable Highway Express, Inc. v. Navigators Ins. Co.*, 498 F.3d 1059,
27 1066 (9th Cir. 2007) (quotation marks and alteration omitted). The burden is on the
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1 movant to show that a stay is appropriate. *See Clinton v. Jones*, 520 U.S. 681, 708
2 (1997).

3 DISCUSSION

4 Noble House moves to stay this action pending resolution of the two test cases in
5 San Diego Superior Court, arguing that resolution of the test cases “will provide
6 guidance” to this Court. Mtn. at 6-7. Plaintiff opposes, arguing that resolution of the two
7 test cases will not be binding on this Court and will only postpone the Court’s decision in
8 this case. Oppo. at 4.

9 Noble House argues a stay promotes the judicial economy because it “will provide
10 guidance regarding whether restaurant surcharges are *per se* unlawful” and whether
11 Noble House “adequately disclosed” its surcharges. *See* Mtn. at 6-7. The Court is
12 unpersuaded that a stay pending resolution of the two test cases promotes judicial
13 economy in this case. Noble House concedes that the test cases are not binding on this
14 Court, but asserts that “this Court will be aided by the resolution of the Test Cases in that
15 it will have a relevant ruling on these state law issues from a California court, which this
16 Court can then give “proper regard” to in making its own ruling.” *Id.* at 7. However, as
17 Plaintiff points out, resolution of the test cases will not be binding on this Court and will
18 not dispose of Plaintiff’s claims. Oppo. at 5. In addition, the Court is unable to predict
19 whether the test cases “will be concluded within a reasonable time in relation to the
20 urgency of the claims presented to the court.” *See Leyva*, 593 F.2d at 864. Noble House
21 contends the test cases will be conducted within a reasonable time because a class
22 certification hearing in San Diego Superior Court is set for August 10, 2018, and trial is
23 set for the first quarter of 2019, Mtn. at 9, but Plaintiff asserts that fact discovery is stayed
24 and hearings in the test cases will likely be delayed, Oppo. at 7-8. Finally, Plaintiff
25 argues her claims will remain even if the test cases are resolved in favor of the defendants
26 in those actions because the ruling will not be binding and this Court will still need to
27 determine whether the class is certifiable, whether the notice of the surcharge was
28 misleading and deceptive, and whether the charge is *per se* unlawful. Oppo. at 5.

1 Accordingly, the Court finds that Noble House has not shown that a stay would promote
2 judicial economy; thus, this factor does not weigh in Noble House’s favor.

3 In arguing that Noble House will suffer hardship if the Court denies the instant
4 motion, Noble House relies exclusively on the cost and burden of defending this lawsuit.
5 Mtn. at 8. However, “being required to defend a suit, without more, does not constitute a
6 ‘clear case of hardship or inequity’ within the meaning of *Landis*.” See *Lockyer*, 398
7 F.3d at 1112. Moreover, even if the decision in the test cases favors Noble House,
8 discovery would still be necessary in the instant action as the test cases are not binding
9 and will not dispose of this action. See Mtn. at 8 (stating that staying this proceeding will
10 provide guidance to the Court on how to proceed). Thus, Noble House has not made out
11 “a clear case of hardship or inequity,” and this factor does not favor Defendant. *Landis*,
12 299 U.S. at 255.

13 Lastly, Noble House asserts that Plaintiff will not be prejudiced because
14 “Plaintiff’s counsel represents all of the . . . plaintiffs [in the state court proceedings].”
15 Mtn. at 8. Accordingly, Noble House contends that “Plaintiff’s interests will be well-
16 represented by her own lawyers in the Test Cases.” *Id.* at 9. Plaintiff counters that she
17 would be prejudiced because she would not be permitted to conduct discovery, which
18 could result in witness memories fading, documents becoming misplaced, or employees
19 of Noble House leaving their job. *Oppo.* at 6-7. In summation, Plaintiff claims she faces
20 the risk of losing access to pertinent records and other related evidence while “there is no
21 articulable prejudice” to Noble House moving forward. *Id.*

22 Here, the Court finds that a stay would result in the potential of prejudicing
23 Plaintiff with regard to delayed discovery. First, for the reasons discussed above, a stay
24 may result in uncertainty for an indefinite period of time as the test cases’ schedule is
25 likely to be delayed. Second, as Plaintiff notes, if the Court grants a stay in this case, she
26 may struggle to obtain receipts or credit-card related information from third-party
27 vendors with potentially short retention periods. See *Montegna v. Ocwen Loan Servicing,*
28 *LLC*, No. 17-CV-00939-AJB-BLM, 2017 WL 4680168, at *6 (S.D. Cal. Oct. 18, 2017)

1 (“the grant of a stay may cause Plaintiff to lose evidence currently in the dominion and
2 control of others not joined in this suit”); *see also Cabiness v. Educ. Fin. Solutions, LLC*,
3 No. 16-CV-01109-JST, 2017 WL 167678, at *3 (N.D. Cal. Jan. 17, 2017) (denying the
4 defendant’s motion to stay, noting that “an extended stay would prejudice the Plaintiff
5 because the passage of time will make it more difficult to reach class members and will
6 increase the likelihood that relevant evidence will dissipate”). Accordingly, because the
7 Court finds that a stay may result in prejudice to Plaintiff, this factor does not favor
8 Noble House.

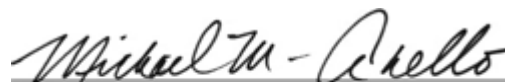
9 In weighing the relevant factors, the Court finds that a stay in this case is
10 inappropriate. Noble House has not shown this is one of those “rare” circumstances
11 where a party in one case must “stand aside while a litigant in another settles the rule of
12 law that will define the rights of both.” *Landis*, 299 U.S. at 255.

13 **CONCLUSION**

14 Based on the foregoing, the Court **DENIES** Noble House’s motion to stay pending
15 resolution of the two test cases in state court. In light of the timing of Plaintiff’s
16 opposition and this Order, the Court **DENIES AS MOOT** Noble House’s *ex parte*
17 application for an order shortening time [Doc. No. 32].

18 **IT IS SO ORDERED.**

19 Dated: April 30, 2018

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21 Hon. Michael M. Anello
22 United States District Judge
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