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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

KEVIN ZIMMERMAN,
Plaintiff,
vs.
HOME DEPOT U.S.A., INC.,
Defendant.
STATE OF NEVADA, ex rel.
ADAM PAUL LAXALT, Attorney General,
Defendant-Intervenor,

Case No. 2:17-cv-00529-JCM-GWF

ORDER

KEVIN ZIMMERMAN,
Plaintiff,
vs.
HOME DEPOT U.S.A., INC.,
dba THE HOME DEPOT #3316,
Defendant.
STATE OF NEVADA, ex rel.
ADAM PAUL LAXALT, Attorney General,
Defendant-Intervenor,

Case No. 2:17-cv-01454-JCM-GWF

ORDER

This matter is before the Court on Defendant-Intervenor State of Nevada’s (“Intervenor”) Motion to Consolidate Cases (ECF No. 40) in Case No. 2:17-cv-00529-JCM-GWF, filed on October 17, 2017. Plaintiff did not file an opposition in this case but Intervenor filed a Reply (ECF

1 No. 43) on November 6, 2017.¹ Also before the Court is Intervenor’s Motion to Consolidate Cases
2 (ECF No. 12) in Case No. 2:17-cv-01454-JCM-GWF, filed on October 17, 2017. Plaintiff did not
3 file an opposition in this case but Intervenor filed a Reply (ECF No. 15) on November 6, 2017.

4 **BACKGROUND**

5 These cases are two of several cases brought by Plaintiff alleging that Nevada businesses
6 have violated the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et. seq.* (“ADA”). At the
7 outset of Plaintiff’s filings and in the interest of judicial economy, the Court determined that all of
8 Plaintiff’s cases should be transferred to Chief Judge Gloria Navarro and to the undersigned. *See*
9 Omnibus Transfer Order (ECF No. 3). The cases, however, were not consolidated. Chief Judge
10 Navarro recused herself from the instant cases due to a financial conflict. ECF No. 4; *See* Case No.
11 2:17-cv-01454-JCM-GWF, ECF No. 6. These cases were then randomly assigned to District Judge
12 James Mahan. ECF No. 5; *See* Case No. 2:17-cv-01454-JCM-GWF, ECF No. 7.

13 Chief Judge Navarro will decide Intervenor’s motion to consolidate the cases before her.
14 Judge Mahan has referred Intervenor’s motion to consolidate to the undersigned in the two cases
15 assigned to him. Therefore, this order is applicable only to Case Nos. 2:17-cv-00529-JCM-GWF
16 and 2:17-cv-01454-JCM-GWF.

17 **DISCUSSION**

18 Federal Rule of Civil Procedure 42(a) provides that “[i]f actions before the court involve
19 common questions of law or fact, the court may (1) join for hearing or trial any or all matters at
20 issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary
21 cost or delay.” The Court has broad discretion in determining whether to consolidate actions
22 involving common questions of law or fact. *Krause v. Nevada Mut. Ins. Co.*, Case No. 2:12-cv-
23 00342-JCM-GWF, 2013 WL 6524657 at *3 (D. Nev. 2012). “Consolidation requires only a
24 common question of law or fact; perfect identity between all claims in any two cases is not
25 required.” *Firefighters, Local 1908 v. County of Clark*, 2012 WL 1986590 at *2 (D. Nev. 2012).

26
27 ¹ Plaintiff filed an opposition to Intervenor’s Motion to Consolidate in his first filed case, which is Case No. 2:17-cv-
28 00304-GMN-GWF, *see* ECF No. 39. It appears that Plaintiff believed this opposition applies to every case and did not file
the opposition in each individual case.

1 The Court must weigh “the interest of judicial convenience against the potential for delay, confusion
2 and prejudice caused by consolidation.” *Firefighters*, 2012 WL 1986590 at *2 (quoting *Sw. Marine,*
3 *Inc. v. Triple A Mach. Shop, Inc.*, 720 F.Supp. 805, 807 (N.D.Cal. 1989)).

4 Local Rule 42-1 states as follows:

5 An action may be considered to be related to another action when:

- 6 (1) Both actions involve the same parties and are based on the same or similar
claim;
- 7 (2) Both actions involved the same property, transaction, or event;
- 8 (3) Both actions involve similar questions of fact and the same question of
law, and their assignment to the same district judge or magistrate judge is
likely to effect a substantial savings of judicial effort;
- 9 (4) Both actions involve the same patent, trademark, or copyright, and one of
the factors identified in (1), (2), or (3) above is present; or
- 10 (5) For any other reason, it would entail substantial duplication of labor if the
actions were heard by different district judges or magistrate judges.

11
12 In granting Intervenor’s motion to intervene, the Court primarily did so with regard to the
13 standing issue regarding Plaintiff’s ability to prove his intent to return to each establishment that he
14 has sued, in light of the numerous ADA enforcement actions he filed in such a short time period.
15 *See* Order (ECF No. 35) in Case No. 2:17-cv-00304-GMN-GWF. Because this issue implicates all
16 of the lawsuits filed by Plaintiff, consolidation may be appropriate with respect to that issue.

17 Intervenor also seeks to consolidate all of Plaintiff’s actions to contest in one motion whether he has
18 alleged sufficient facts to state a claim for relief and/or in regard to common pleading deficiencies in
19 each of his complaints. Depending on the circumstances, this could also be an appropriate issue for
20 limited consolidation. With respect to the two cases before Judge Mahan, however, the Intervenor
21 can simply bring simultaneous motions to dismiss on standing grounds or based on pleading
22 deficiencies in each action. There is no need to consolidate these cases for interests of judicial
23 economy or to avoid prejudice.

24 Intervenor also requests consolidation so that it can move for sanctions or other remedial
25 relief against Plaintiff where appropriate. *Motion* (ECF No. 40), pgs 11-12. Intervenor suggests
26 that sanctions should be imposed on Plaintiff for false statements he allegedly made in his
27 applications to proceed *in forma pauperis* (“IFP”). The Court conducted a hearing with Plaintiff
28 and his counsel on March 3, 2017 regarding his IFP applications. Both prior to and during that

1 hearing, Plaintiff informed the Court that he was withdrawing all of his IFP applications and would
2 pay the filing fees in each case. It is the Court's understanding that he has done so. Whether
3 Plaintiff made any misrepresentations in his IFP filings is debatable. As to these two cases,
4 however, consolidation on this issue is not appropriate. Plaintiff filed an application to proceed in
5 *forma pauperis* in Case No. 2:17-cv-00529-JCM-GWF on February 22, 2017.
6 *Motion/Application* (ECF No. 1). He subsequently paid the filing fee on March 23, 2017. *Receipt*
7 *of Payment* (ECF No. 7). Plaintiff did not file an application to proceed in *forma pauperis* in Case
8 No. 2:17-cv-01454-JCM-GWF. Thus, there is no basis to impose such sanctions on Plaintiff and no
9 reason to consolidate these two cases with respect to that issue. Accordingly,

10 **IT IS HEREBY ORDERED** that Defendant-Intervenor's Motion to Consolidate Cases
11 (ECF No. 40) in Case No. 2:17-cv-00529-JCM-GWF is **denied**.

12 **IT IS FURTHER ORDERED** that Defendant-Intervenor's Motion to Consolidate Cases
13 (ECF No. 12) in Case No. 2:17-cv-01454-JCM-GWF is **denied**.

14 DATED this 13th day of November, 2017.

15 
16 GEORGE FOLEY, JR.
17 United States Magistrate Judge