

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Gilbert v. Alsamiri

Gilbert · No. 1:22-cv-00481-JLT-HBK · Decided March 13, 2023

OPINION

Gilbert v. Alsamiri

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 DARREN GILBERT, Case No. 1:22-cv-00481-JLT-HBK 12 Plaintiff, ORDER TO SHOW
CAUSE1

13 v. 14 DAY DEADLINE

14 ABDO M. ALSAMIRI; TALAL A. OBAID, dba Obaid Smoke Shop Plus, 15 Defendants. 16
17 Pending before the Court is Plaintiff’s motion for default judgment filed December 19, 18 2022
(Doc. No. 9). Plaintiff Darren Gilbert commenced this action by filing a complaint against 19
Defendants Abdo M. Alsamiri and Talal A. Obaid, doing business as Obaid Smoke Shop Plus 20
(collectively “Defendants”) alleging violations of Title III of the Americans with Disabilities Act
21 (“ADA”), 42 U.S.C. §§ 12101 et seq (Count I); the California Unruh Act, California Civil
Code § 22 51 et seq. (Count II); and California Health & Safety Code §§ 19955, 19959 (Count III)
on April 23 24, 2022. (Doc. No. 1, “Complaint”). Plaintiff seeks an award of statutory damages,
costs of 24 suit, attorney’s fees, litigation expenses, declaratory relief, injunctive or preventative
relief, and 25 interest at the legal rate from the date of filing of the Complaint. (Id. at 8). Plaintiff
noting this 26 27 1 This matter was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)
(B) and Local Rule 28 302(c)(19). 1 Court has original jurisdiction over the ADA claims seeks to
have this Court exercise 2 supplemental jurisdiction over Plaintiff’s state law Unruh Act Claim
and the California Health & 3 Safety Code claim. (Id. at 2). 4 A district court presiding over a civil
action in which it has original jurisdiction “shall 5 have supplemental jurisdiction over all other
claims that are so related to claims in the action 6 within such original jurisdiction that they form
part of the same case or controversy under Article 7 II of the United States Constitution.” 28
U.S.C. § 1367(a). Nonetheless, a district court may 8 decline to exercise supplemental jurisdiction
over a claim if: 9 (1) the claim raises a novel or complex issue of State law, 10 (2) the claim
substantially predominates over the claim or claims over which the district court has original
jurisdiction, 11

(3) the district court has dismissed all claims over which it has

12 original jurisdiction, or 13 (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction. 14 15 28 U.S.C. § 1367(c). 16 The Ninth Circuit recently upheld a district court’s finding of “extraordinary 17 circumstances” and “compelling reasons” to decline supplemental jurisdiction under the Unruh 18 Act over accessibility related discrimination claims for high frequency litigators. See *Vo v. Choi*, 19 49 F. 4th 1167, 1174 (9th Cir. 2022); see also *Arroyo, Jr. v. Rosas*, 19 F.4th 1202, 1206 (9th Cir. 20 2021) (finding “extraordinary circumstances”). Significant to the courts’ decisions were the 21 additional filing and heightened pleading requirements California law imposes on high frequency 22 litigators.² *Vo*, 49 F. 4th at 1172-74; *Arroyo*, 19 F. 4 1211-14. Considering *Vo*, Plaintiff shall 23 show cause why the undersigned should recommend the district court exercise supplemental 24 jurisdiction over Plaintiff’s Unruh Act claim (Claim II). 25 The same additional filing and heightened pleading requirements are not limited to claims 26 2 Cal. Civ. Proc. Code § 425.55(b)(1) defines “high frequency litigators” as persons who have filed 10 or 27 more complaints alleging construction related accessibility violation in the 12-month period preceding the filing of the instant action). The definition also extends to attorneys. *Id.* § 425.55(b)(2). 28 1 | under the Unruh Act but also apply to other statutes for “construction-related accessibility 2 | claims.” *Arroyo*, 19 F.4th at 1206; see also Cal. Proc. Civ. Code § 425.50(a); Cal. Civ. Code § 3 | 55.2. A “construction-related accessibility standard” means “a provision, standard, or regulation 4 | under state or federal law requiring compliance with standards for making new construction and 5 | existing facilities accessible to people with disability, including, but not limited to, any provision, 6 | standard, or regulation set forth in [Cal. Civ. Code §] 51... ([Cal. Health and Safety Code §] 7 | 19955.5 ...the federal [ADA]....” Cal. Civ. Code. § 55.52 (a)(6). Both §§ 19955 and 19959 8 || were enacted to safeguard that certain facilities are accessible to disabled individuals and § 9 | 19955.5 is expressly included as subject to the “construction-related accessibility standard.” 10 | Thus, because these same filing and pleading requirements apply to Plaintiff’s Health and Safety 11 | Code claim, Plaintiff shall show cause why the undersigned should recommend the district court 12 || exercise supplemental jurisdiction over Plaintiff’s Health and Safety Code claim (Count III). 13 Accordingly, it is ORDERED: 14 1. Plaintiff shall show cause in writing, no later than fourteen (14) days from the date of 15 this Order, why the undersigned should recommend the district court exercise 16 supplemental jurisdiction over Plaintiff’s Unruh Act Claim (Claim II) and Health and 17 Safety Code claim (Count HI). 18 2. Plaintiff shall include with his response declarations from both Plaintiff and □□□□□□□□ 19 counsel, signed under penalty of perjury, which include all facts necessary for the 20 Court to determine whether each is “high frequency litigant.” 21 3. Plaintiff’s failure to respond to the Order shall be deemed a non-opposition to the 22 undersigned recommending the district court decline to exercise supplemental 23 jurisdiction over Plaintiffs related state law claims. 24 °° | Dated: _ March 13, 2023 Mihaw. Wh. foareh fackte

26 HELENA M. BARCH-KUCHTA

4 UNITED STATES MAGISTRATE JUDGE

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