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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MAURIZIO ANTONINETTI,)	Civil Case No. 05cv1660 J (WMC)
Plaintiff,)	
v.)	
CHIPOTLE MEXICAN GRILL, INC. and)	ORDER DENYING PLAINTIFF’S MOTION TO AMEND FINDINGS OF FACT AND FOR ADDITIONAL FINDINGS.
DOES 1 THROUGH 10, Inclusive,)	
Defendants.)	

Before the Court is Plaintiff Maurizio Antoninetti’s (“Plaintiff”) Motion to Amend Findings of Fact and for Additional Findings of Fact (“Motion”) pursuant to Federal Rules of Civil Procedure, Rule 52(b). For the reasons set forth below, the Court **DENIES** Plaintiff’s Motion.

Background

On August 22, 2005, Plaintiff, who is wheelchair bound, brought the above-captioned action against Defendant Chipotle Mexican Grill, Inc. (“Defendant” or “Chipotle”) under Title III of the Americans with Disabilities Act (“ADA”) and under the California Disabled Persons Act (“CDPA”). [Doc. No. 1.] Plaintiff claimed that Defendant denied him full and equal access to two of its restaurants, one in Encinitas and the other in Pacific Beach. (*Id.*) Plaintiff claimed

1 that he was denied the Chipotle experience because the 44 inch food preparation counters
2 obstructed his view. (*Id.*)

3 On November 27, 29, 30 and December 3, the Court held a bench trial. In its Findings of
4 Fact, Conclusions of Law, and Judgment, the Court found that: (1) Defendant's prior practice of
5 accommodating customers with disabilities, including customers in wheelchairs, did not
6 constitute equivalent facilitation under Section 7.2(2)(iii) of the ADAAG; (2) Defendant's
7 current written Customers with Disabilities Policy constitutes equivalent facilitation under
8 Section 7.2(2)(iii) of the ADAAG; (3) Plaintiff is not entitled to an injunction requiring
9 Defendant to lower the wall in front of the Restaurants' food preparation counters; and (4)
10 Plaintiff is entitled to a total of \$5000.00 in damages for the occasions on which he encountered
11 barriers to his entrance into Defendant's restaurants. [Doc. No. 229 at 2-3.]

12 On January 22, 2008, Plaintiff filed a Motion to Amend Findings of Fact and for
13 Additional Findings of Fact. [Doc. No. 230.] On February 25, 2008, Defendant filed its
14 Opposition to Plaintiff's Motion. [Doc. No. 236.] On March 3, 2008, Plaintiff filed its Reply to
15 Defendant's Opposition. [Doc. No. 237.]

16 *Legal Standard*

17 Rule 52(b) of the Federal Rules of Civil Procedure states the applicable standard for a
18 party to amend a court's findings of fact: "On a party's motion filed no later than 10 days after
19 entry of judgment, the court may amend its findings- or make additional findings- and may
20 amend the judgment accordingly." Fed. R. Civ. P. 52(b).

21 One of the purposes of Rule 52(b) is to provide the court an opportunity to correct
22 manifest errors of law or fact. *Pro Edge L.P. v. Gue*, 377 F.Supp.2d 694, 698 (N.D. Iowa 2005);
23 *Padilla v. Miller*, 143 F.Supp.2d 479, 487 (M.D. Pa. 2001) ("To prevail on a motion to amend ...
24 the movant must show that the motion is necessary to correct manifest errors of law or fact.").
25 Other recognized grounds for a motion under Rule 52(b) are where a party seeks to amend a
26 judgement based on new evidence not available at trial or where there has been a change in the
27 controlling law. *Fontenot v. Mesa Petroleum Co.*, 791 F.2d 1207, 1291-1220 (5th Cir. 1986);
28 *Diebitz v. Arreola*, 834 F.Supp.298, 302 (E.D. Wis. 1993).

1 694, 698; *Fontenot*, 791 F.2d 1207, 1291-1220; *Anderson*, 591 F.Supp. 1, 4; *Weyerhaeuser*, 777
2 F.2d 1344, 1352. Plaintiff has failed to make any of these showings.

3 **I. Absence of Manifest Error of Law or Fact in the Court's Judgment**

4 Plaintiff argues that the Court must include his proposed additional findings of fact
5 regarding the "Chipotle experience" for standing customers who can see over the wall. [Doc.
6 No. 230 at 3-6.] With respect to this argument, Plaintiff has failed to identify any manifest error
7 in the Court's findings. Plaintiff wishes to elaborate on the ability of standing customers to
8 determine, for example, whether the chicken is in chunks or strips, whether or not the barbacoa
9 is dry, and whether or not the bins are empty or recently replenished. (*Id.*) In its Findings of
10 Facts and Conclusions of Law, the Court made the specific finding that "Chipotle provides
11 specific details for the appearance of its food" and that "[c]ustomers can actually see if the rice is
12 bright white or has freshly chopped cilantro in it." [Doc. No. 229 at 3.] The Court also found
13 that "[s]ome people are visual eaters and if the food looks good, they will want to eat it." (*Id.* at
14 11.) Most importantly, though, the Court described the elements that Plaintiff now attempts to
15 elaborate on in great detail as being part of the "Chipotle experience," yet found that "the ability
16 to see the freshness of the quality ingredients ... has always been of secondary importance to the
17 appearance and taste of the food." (*Id.* at 3.) Plaintiff has not identified any error in these
18 factual findings. Instead, Plaintiff merely attempts to include additional facts that are not
19 inconsistent with what the Court already found. This is insufficient to show manifest error.

20 Plaintiff's argument that the Court must include his proposed additional findings of fact
21 regarding the methods of accommodation for people in wheelchairs again fails to identify any
22 manifest error in the Court's findings. [Doc. No. 230 at 6.] Plaintiff claims that Chipotle's
23 methods of accommodation deny people in wheelchairs the opportunity to be served as quickly
24 as standing customers. (*Id.*) Plaintiff wishes to include findings that some customers are able to
25 proceed through the line in one minute or less, that it takes a customer an average of two minutes
26 to proceed through, and that it took Plaintiff three minutes to proceed through. (*Id.* at 6-7.)
27 Plaintiff's proposed findings are unnecessary, however, because the Court already included the
28 latter two findings in its Findings of Fact. [Doc. No. 229 at 14.] The first proposed finding, that

1 some customers can be served in one minute or less, is implicitly included in the finding about
2 average times. (*Id.*) Furthermore, Plaintiff fails to establish that the length of time needed to
3 proceed through the line is in direct correlation with whether a person has a disability. Indeed,
4 the Court found that many able-bodied customers can take up to ten minutes to proceed through
5 the line, substantially longer than the average of two minutes. (*Id.*) With this finding in mind, it
6 is apparent that Plaintiff has failed to show any manifest error.

7 Plaintiff also argues that the Court failed to include evidence critical to Mr. Antoninetti's
8 experience at Chipotle during the site inspections of October 6, 2006, such as the fact that he
9 was not advised of available accommodations, he was not shown food items until he asked to see
10 them, and he did not know how much of each food item went into his burrito. [Doc. No. 230 at
11 8-10.] Again, Plaintiff's argument fails to establish any manifest error of law or fact. The Court
12 found that Chipotle created and implemented its written Policy for Customers With Disabilities
13 in February of 2007, after Plaintiff's experiences at either restaurant as a bona fide customer.
14 The Court indeed found that it could not with any confidence find that Plaintiff had received
15 equivalent facilitation during his bona fide visits, and found in favor of Plaintiff for those visits.
16 [Doc. No. 229 at 31-32.] However, the Court also found that "Plaintiff [was] not entitled to
17 recover damages in connection with his visit to the Pacific Beach Restaurant three days before
18 his deposition or in connection with site-inspection visits to the two Restaurants, because, in
19 each instance, he was not a bona fide customer ... []" (*Id.*) Hence, Plaintiff's proposed
20 additional findings regarding his experience during the site inspections are irrelevant and do not
21 establish manifest error in the Court's findings concerning Chipotle's written policy.

22 Finally, Plaintiff fails to establish any manifest error of law or fact with respect to his
23 proposed additional findings about Plaintiff's litigation history. [Doc. No. 230 at 12.] The
24 Court found that Plaintiff has personally sued at least twenty-two establishments or businesses
25 for alleged accessibility violations. [Doc. No. 229 at 4.] Plaintiff argues that he has filed suit
26 against only six different sites. [Doc. No. 230 at 12.] To arrive at this number, Plaintiff is
27 counting eighteen different stores at Oceanside Mall as one site. Plaintiff's proposed finding of
28 fact is misleading, and is not inconsistent with the Court's findings. The Court found that "[a]s a

1 result of his visit to Oceanside Mall, Plaintiff agreed to be, and in fact became, a plaintiff in
2 accessibility lawsuits ... against at least eighteen separate businesses that had stores at Oceanside
3 Mall.” [Doc. No. 229 at 5.] Plaintiff has not demonstrated any manifest error in these findings
4 of fact.

5 **II. Absence of New Evidence not Available at Trial or a Change in the Controlling Law.**

6 In his Motion to Amend, Plaintiff has failed to introduce either new evidence that was not
7 available at trial or a change in the controlling law that would justify his proposed amendments.
8 In his proffer, Plaintiff actually cites exclusively to the trial transcripts and exhibits in this case,
9 showing that all of the evidence upon which Plaintiff relies was available and was presented at
10 trial. Moreover, Plaintiff has not cited any new controlling case law that would affect the
11 Court’s decision. Motions to amend a court’s factual and legal findings may not be used to re-
12 litigate arguments that have already been presented to the Court. *Davis v. Mathews*, 450 F.Supp.
13 at 318; *Fontenot*, 791 F.2d at 1291-1220; *Diebitz*, 834 F.Supp. at 302. The Court evaluated and
14 reached a concise conclusion on all matters brought forth at trial, and its order reflects that.
15 Plaintiff’s motion, if granted, would just render the order repetitive.

16 **III. Ineffectiveness of Plaintiff’s Proposed Additional Facts.**

17 A motion to amend a district court’s factual and legal findings is properly denied where
18 the facts that the moving party seeks to add would not affect the outcome of the case or are
19 immaterial to the court’s conclusions. *Weyerhaeuser Co.*, 777 F.2d at 1352. None of the facts
20 Plaintiff proposes to add would affect the outcome of the case, and furthermore, most of them
21 are immaterial to the Court’s conclusions.

22 Plaintiff argues for the inclusion of facts pertaining to the Chipotle experience for
23 customers who can see over the wall, such as their ability to look at all the bins and ingredients,
24 determine which items are more visually appealing or fresh, and watch the burrito being built.
25 [Doc. No. 230 at 3-6.] These proposed additional findings would not affect the outcome of the
26 case because they do not take into account Chipotle’s written accommodations for disabled
27 customers and non-disabled customers who cannot see over the wall. The Court found that
28 Chipotle’s written policy “describes at least three accommodations ... which provide substan-

1 tially equal access to Chipotle facilities.” [Doc. No. 229 at 32.] These accommodations
2 include, but are not limited to, placing samples of food in souffle cups and showing them to the
3 customer, allowing a customer to see or sample the food at a table, and describing the food or
4 food preparation process to the customer. (*Id.* at 21.) As such, Plaintiff’s proposed findings of
5 fact regarding the experience for standing customers would have no bearing on the Court’s
6 finding that Chipotle’s written accommodations provide disabled and non-disabled customers
7 who cannot see over the wall with a substantially similar opportunity to enjoy the Chipotle
8 experience. (*Id.* at 32.)

9 Moreover, Plaintiff’s proposed additional findings regarding the amount of time it takes
10 to serve its customers would have no affect on the outcome of the case. Plaintiff moves to
11 include the fact that a standing customer can go through the line in one minute or less, that
12 Chipotle employees determined that the average amount of time to serve customers is two
13 minutes, and that it took three minutes for Plaintiff to be able to see the food ingredients
14 available for selection, not including the time it took for him to watch his burrito being assem-
15 bled. [Doc. No. 30 at 6-7.] As outlined above, the Court has already included Plaintiff’s
16 proposed additional findings about the average length of time it takes for a customer to proceed
17 through the line as well as the length of time it took Plaintiff to proceed through. [Doc. No. 229
18 at 28.] Again, the fact that it takes some customers one minute to proceed through the line is
19 implicit in the finding that the average time is two minutes. (*Id.*) Accordingly, such additional
20 facts would have no effect on the outcome of the case.

21 Plaintiff’s proposed additional findings of fact regarding the menu board would also have
22 no affect on the outcome of the case. [Doc. No. 230 at 8.] Plaintiff argues that the Court must
23 include the fact that “simply looking at the menu board does not offer the Chipotle Experience,”
24 because the menu board itself does not allow a person to see, for example, the freshness of
25 ingredients, or to determine whether a mistake has been made. (*Id.*) The Court expressly found
26 that “the ability to see the freshness of the quality of ingredients ... has always been of secondary
27 importance to the appearance and taste of the food once it has been prepared and served to the
28 customer.” [Doc. No. 229 at 3.] Furthermore, the Court did not rely on any assumption that the

1 menu board provided such information in reaching its conclusion that Chipotle's written policy
2 provides customers with disabilities with equivalent facilitation. Therefore, Plaintiff's proposed
3 findings of fact are irrelevant and would have no effect on the outcome of the case.

4 Plaintiff's argument that the Court should include additional findings regarding
5 Chipotle's written Policy for Customers With Disabilities is equally without merit. [Doc. No.
6 230 at 10-11.] In its findings, the Court dismissed Chipotle's general policy as insufficient but
7 determined that the written policy guidelines rendered equivalent facilitation because they
8 provided disabled customers with substantially equal or greater access to Chipotle's facilities.
9 [Doc. No. 229 at 32.] The written policy provides that Chipotle "will offer a suitable accommo-
10 dation based on the individual circumstances, and will be responsive to customer's requests."
11 (*Id.* at 21.) Plaintiff alleges deficiencies with Chipotle's written policy, namely, that it is
12 defective and inadequate because not all methods of accommodation are listed and because
13 employees are allowed to use their common sense in devising accommodations. [Doc. No. 230
14 at 10-11.] The absence of a list of every possible accommodation does not render the written
15 policy ineffective, particularly because accommodations differ drastically depending on the
16 specific disability or the disabled person's needs and desires. [Doc. No. 229 at 32-33.] If
17 accepted, Plaintiff's request would limit Chipotle's methods of accommodation by requiring
18 Chipotle to abide by a specific set written in policy form as opposed to providing general
19 guidelines but allowing employees to use their best judgment and listen to disabled customers'
20 accommodation requests. Since the language of the order explicitly considered the multitude of
21 options available to Chipotle employees in accommodating disabled persons, none of Plaintiff's
22 proposed additional findings relating to the written policy would change the outcome of the
23 Court's findings.

24 Plaintiff's proposed additional findings of fact regarding his experiences also would have
25 no impact on the outcome of the case. Plaintiff moves to include evidence that he was not
26 advised of available accommodations, he was not shown food items until he asked to see them,
27 and he did not know how much of each food item went into his burrito. [Doc. No. 230 at 8-10.]
28 As explained above, the Court has already found that Plaintiff did not visit the restaurants as a

1 bona fide customer when Chipotle's written Customers With Disabilities Policy was imple-
2 mented. [Doc. No. 229 at 34.] Accordingly, Plaintiff's experiences prior to that have no bearing
3 on the Court's findings about the policy.

4 Finally, Plaintiff's proposed additional factual findings regarding his litigation history,
5 outlined above, would not affect the outcome of the case. The central issue in the case was
6 whether Plaintiff was denied full and equal access to two of Chipotle's restaurants. [Doc. No.
7 229 at 1.] The Court has already determined that Chipotle's policy prior to the implementation
8 of the written policy did not constitute equivalent facilitation, but that Chipotle's written policy
9 did constitute such. [Doc. No. 229 at 32.] Neither the Court's finding that Chipotle's written
10 disability policy is an equivalent facilitation, nor its award of damages for Plaintiff's visits to the
11 restaurants prior to the creation of the policy was dependent upon Plaintiff's litigation history.

12 The Court only considered Plaintiff's litigation history in determining whether injunctive
13 relief was appropriate, an element of which is irreparable injury. [Doc. No. 229 at 34-35.] The
14 Court found that Plaintiff failed to satisfy his evidentiary burden for his requested injunctive
15 relief, because he could not show that he had a sincere intent to return. (*Id.* at 35). The Court
16 found that "Plaintiff has sued over twenty business entities for alleged accessibility violations,
17 and in all (but one) of those cases, he never returned to the establishment he sued after settling
18 the case and obtaining a cash payment." (*Id.* at 36). The Court specifically found that eighteen
19 of those lawsuits were filed after a one-day visit to a mall in Oceanside, rendering Plaintiff's
20 argument that he filed suit against only six sites not only misleading, but irrelevant, given the
21 Court's discussion of the specifics. (*Id.*) The Court additionally considered, in determining
22 whether Plaintiff has a sincere intent to return to Chipotle, the fact that Plaintiff only visited the
23 Encinitas Restaurant once, three years ago (disregarding his site inspection for the purposes of
24 litigation), and that Plaintiff only visited the Pacific Beach Restaurant once in February 2005,
25 and twice, for purposes of litigation, in October 2006. (*Id.* at 35-36). Aside from those visits,
26 Plaintiff was unable to recall the dates or even the exact number of his other visits to the Pacific
27 Beach Restaurant, other than that they all occurred after he filed this lawsuit. (*Id.* at 36). The
28 Court carefully considered the full details of Plaintiff's litigation history as well as the details of

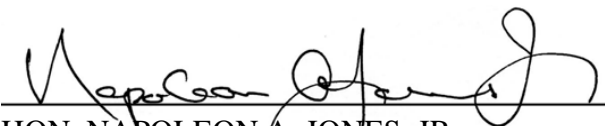
1 his Restaurant visits in this case, in reaching its conclusion that Plaintiff does not have a sincere
2 intent to return to Chipotle. Accordingly, Plaintiff's proposed findings do not merit amendment
3 to the Court's Findings of Fact and Conclusions of Law.

4 ***Conclusion***

5 For the foregoing reasons, the Court **DENIES** Plaintiff's Motion to Amend Findings of
6 Fact and for Additional Findings of Fact.

7 **IT IS SO ORDERED.**

8
9 DATED: April 21, 2008

10 
11 HON. NAPOLEON A. JONES, JR.
United States District Judge

12 cc: Magistrate Judge William McCurine
13 All Counsel of Record