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

MAURIZIO ANTONINETTI)	Civil No. 05CV1660-J (WMC)
)	
Plaintiff,)	AND RELATED CASE NUMBER:
)	
v.)	06CV2671-J (WMC)
)	
CHIPOTLE MEXICAN GRILL, INC.,)	ORDER DENYING DEFENDANT’S
AND DOES 1 THROUGH 10, inclusive,)	EX PARTE MOTION TO
)	CONSOLIDATE CASES FOR TRIAL
Defendants.)	
)	
AND RELATED CASE)	
)	
_____)	

19 Before the Court is Defendant Chipotle Mexican Grill’s (“Defendant”) *Ex Parte* Motion
20 to Consolidate Case No. 05cv1660 with Case No. 06cv2671. [Doc. No. 151.] The Court
21 addresses Defendant’s *Ex Parte* Motion without issuing a briefing schedule in order to avoid
22 delaying the Final Pretrial Conference in Case No. 05cv1660, which is currently scheduled for
23 September 10, 2007. [See Doc. No. 146.] For the reasons stated below, the Court **DENIES**
24 Defendant’s *Ex Parte* Motion to Consolidate.

Background

25
26 On August 22, 2005, Plaintiff Maurizio Antoninetti (“Plaintiff”) filed an individual
27 lawsuit against Defendant, and Defendant answered Plaintiff’s Complaint. [Case No. 05cv1660,
28 Doc. Nos. 1, 3.] In his first-filed action, Plaintiff alleges that he was denied full and equal access

1 to facilities owned and operated by Defendant because the facilities are inaccessible to individu-
2 als who use wheelchairs for mobility. (Compl. ¶ 9, 05cv1660.) Plaintiff alleges that Defen-
3 dant's food-preparation counters are inaccessible. (*Id.*) Plaintiff alleges causes of action under
4 the Americans with Disabilities Act and the California Civil Code. (*Id.* ¶¶ 15-27.)

5 On December 6, 2006, Plaintiff filed a second action against Defendant, this time as a
6 putative class action. [Case No. 06cv2671, Doc. No. 1.] Plaintiffs Maurizio Antoninetti, Jean
7 Riker, James Perkins, Karen Friedman, and Michael Rifkin filed a Complaint alleging that the
8 high walls at Defendant's restaurants preclude individuals in wheelchairs from seeing the food
9 items available for selection in the same manner as nondisabled individuals. (Compl. ¶ 28,
10 06cv2671.) The class Plaintiffs seek to represent consists of "all persons with mobility disabili-
11 ties who use wheelchairs or motorized mobility aides, who have been or will be denied their
12 rights under the ADA and state law to access goods, services, benefits, advantages, privileges
13 and accommodations provided by Chipotle at its approximately 83 restaurants within the state of
14 California." (*Id.*) Plaintiffs allege the following causes of action against Defendant: (1)
15 violation of the Americans with Disabilities Act; (2) violation of the California Civil Code; (3)
16 unfair business practice; (4) intentional infliction of emotional distress; and (5) negligence per
17 se. (*Id.* ¶¶ 32-66.)

18 Defendant answered the second-filed action. [Case No. 06cv2671, Doc. No. 3.] The
19 second-filed action was transferred to this Court pursuant to Local Civil Rule 40.1.d. [Doc. No.
20 10.] Defendant subsequently filed a Motion requesting that the Court consolidate the two
21 actions. (Mot. at 5.) On March 20, 2007, the Court granted Defendant's Motion to Consolidate
22 for purposes of discovery only. [Doc. No. 78.] The Court reserved the question of consolida-
23 tion for trial for future consideration. On June 14, 2007, the Court granted in part and denied in
24 part the parties' motions for summary judgment in Case No. 05cv1660. [Doc. No. 129.]

25 On September 6, 2007, Defendant filed the instant *Ex Parte* Motion to Consolidate.
26 [Doc. No. 151.] According to a declaration attached to the instant Motion, Defendant's counsel
27 contacted Plaintiff to determine whether Plaintiff would stipulate to consolidating the cases. (Vu
28

1 Decl. ¶ 7.) Plaintiff's counsel indicated that Plaintiff would not stipulate to the consolidation if
2 it would delay the setting of trial in Case No. 05cv1660. (*Id.*)

3 *Legal Standard*

4 Consolidation of actions is governed by Federal Rule of Civil Procedure 42(a), which
5 provides as follows:

6 When actions involving a common question of law or fact are pending before the
7 court, it may order a joint hearing or trial of any or all the matters in issue in the
8 actions; it may order all the actions consolidated; and it may make such orders
concerning proceedings therein as may tend to avoid unnecessary costs or delay.

9 Fed. R. Civ. P. 42(a). The district court has broad discretion in making this determination.
10 *Investors Research Co. v. U.S. Dist. Ct.*, 877 F.2d 777, 777 (9th Cir. 1989). The presence of a
11 common question of law or fact is a threshold requirement for consolidation. *Yousefi v.*
12 *Lockheed Martin Corp.*, 70 F. Supp. 2d 1061, 1064-65 (C.D. Cal.1999). However, even if a
13 common question of law or fact exists, consolidation is inappropriate if it results in "ineffi-
14 ciency, inconvenience, or unfair prejudice to a party." *EEOC v. HBE Corp.*, 135 F.3d 543, 551
15 (8th Cir. 1998); *see also Takeda v. Turbodyne Techs., Inc.*, 67 F. Supp. 2d 1129, 1132 (C.D. Cal.
16 1999) ("[I]n deciding whether to consolidate actions under Rule 42(a), a court must balance the
17 savings of time and effort consolidation will produce against any inconvenience, delay,
18 confusion, or prejudice that may result.").

19 In addressing consolidation, a court should consider the risk of delaying trial. "Federal
20 courts have declined to consolidate cases involving common questions of law or fact where the
21 cases were at different stages of preparedness for trial and where consolidation would delay the
22 case ready of disposition." *Servants of the Paraclete, Inc. v. Great Am. Ins. Co.*, 866 F. Supp.
23 1560, 1572 (D.N.M. 1994) (citing *Mills v. Beech Aircraft Corp.*, 886 F.2d 758, 762 (5th Cir.
24 1989); *Petromanagement Corp. v. Acme-Thomas Joint Venture*, 835 F.2d 1329, 1334 (10th Cir.
25 1988); *St. Bernard Gen. Hosp. v. Hosp. Serv. Ass'n*, 712 F.2d 978, 990 (5th Cir. 1983)). Where a
26 case that is ready for or close to trial would be held up pending completion of pretrial proceed-
27 ings in another case, courts have consistently denied consolidation. *Transeastern Shipping*
28 *Corp. v. India Supply Mission*, 53 F.R.D. 204, 206 (S.D.N.Y. 1971).

1 *Discussion*

2 Defendant argues that Case No. 05cv1660 and Case No. 06cv2671 should be consolidated
3 because the cases involve many of the same questions of law and fact and have the same lead
4 plaintiff. (Mot. to Consol. at 1.) Defendant argues that consolidation will conserve judicial
5 resources. (*Id.*) Defendant also argues that if the Court does not consolidate the cases, there is a
6 risk of inconsistent judgments. (*Id.*) Plaintiff opposes Defendant's Motion to Consolidate
7 insofar as it would delay the setting of trial in Case No. 05cv1660. (*See Vu Decl.* ¶ 7.)

8 The Court recognizes, as it did in its Order on Defendant's first motion to consolidate,
9 that Case No. 05cv1660 and Case No. 06cv2671 involve common questions of fact. (*See Order*
10 *on Mot. to Consol.* at 5.) However, there is no overriding evidence showing that consolidation
11 would enhance court efficiency. There are significant procedural differences between Case No.
12 05cv1660 and Case No. 06cv2671. Case No. 05cv1660 is ready for trial and was filed more than
13 two years ago. Case No. 06cv2671 was filed nine months ago and is still in the formative stages.
14 No trial date or discovery cutoff date has been set in Case No. 06cv2671, nor has a motion for
15 class certification been filed. Consolidation of Case No. 06cv2671 realistically would delay trial
16 in Case No. 05cv1660 for several months because the second-filed case is a class action and
17 encompasses all of Defendant's California restaurants. Thus, Case No. 06cv2671 involves
18 significantly more plaintiffs and public accommodations than Case No. 05cv1660. All of these
19 factors strongly weigh against consolidation of the two cases.

20 Defendant argues that if the Court does not consolidate the two cases, there is a risk of
21 inconsistent judgments. (Mot. to Consol. at 1.) However, this is not a situation in which
22 numerous actions have been filed against Defendant in multiple jurisdictions. Both cases were
23 filed in this District and were assigned to this Court. Under principles of *stare decisis*, the Court
24 will be obligated to follow its legal rulings in the first-filed case when it rules upon the second-
25 filed case, thereby eliminating the danger of inconsistent judgments.

26 Defendant also asserts that "there is a substantial likelihood that some or all of the legal
27 rulings and factual determinations in the First Action will bind the putative class members in the
28 Second Action," and that this raises due process concerns. (Mot. to Consol. at 6.) Certainly, a

1 ruling in Defendant's favor will have *stare decisis* effect on the putative class members in the
2 second-filed case. However, Defendant does not explain why the putative class members would
3 be bound under principles of res judicata. Res judicata "bars litigation in a subsequent action of
4 any claims that were raised or could have been raised in the prior action. . . . The doctrine is
5 applicable whenever there is (1) an identity of claims, (2) a final judgment on the merits, and (3)
6 *identity or privity between parties.*" *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708,
7 713 (9th Cir. 2001) (emphasis added). Here, Mr. Antoninetti is a party to both the first-filed
8 action and the second-filed action, and the Court's rulings in the first-filed action will therefore
9 have a res judicata effect as to him. However, Defendant does not explain why the Court's
10 rulings in the first-filed action will have a res judicata effect as to members of the putative class.
11 A court's order does not bind members of a putative class if no class action has been certified.
12 *See Aguilera v. Pirelli Armstrong Tire Corp.*, 223 F.3d 1010, 1013 n.1 (9th Cir. 2000). Because
13 no class has been certified in the second-filed action, there is little risk that the Court's ruling in
14 the first-filed action will raise due process concerns as to the members of the putative class.

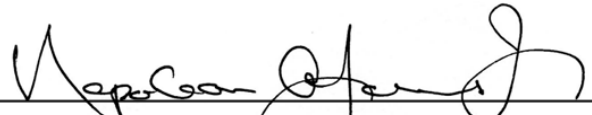
15 On balance, the potential for delay and prejudice outweighs any savings of time or effort
16 that may result if the cases are consolidated for trial. Accordingly, the Court **FINDS** that
17 consolidation is not merited for purposes of trial.

18 *Conclusion*

19 For the reasons stated above, the Court **DENIES** Defendant's *Ex Parte* Motion to
20 Consolidate Case No. 05cv1660 with Case No. 06cv2671 for purposes of trial. The cases shall
21 remain consolidated for purposes of discovery.

22 **IT IS SO ORDERED.**

23 DATED: September 7, 2007

24 
25 HON. NAPOLEON A. JONES, JR.
United States District Judge

26 cc: Magistrate Judge McCurine
27 All Parties
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