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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Advocates for American Disabled
10 Individuals LLC, et al.,

11 Plaintiffs,

12 v.

13 The Price Company,

14 Defendant.

No. CV-16-02141-PHX-GMS

ORDER

15 “Federal courts are required *sua sponte* to examine jurisdictional issues such as
16 standing.” *Chapman v. Pier 1 Imports (U.S.) Inc.*, 631 F.3d 939, 954 (9th Cir. 2011) (en
17 banc) (citation omitted). After reviewing the complaint in this action, the Court has
18 serious questions about whether Plaintiffs have standing to proceed. The Court will order
19 Plaintiffs to show cause as to why this case should not be dismissed for lack of standing.

20 Plaintiff Advocates for Individuals with Disabilities, LLC (“Advocates”) makes no
21 allegations in the complaint regarding its status, nature, or interest in this case. Plaintiff
22 David Ritzenthaler alleges that he is legally disabled, that he has a state-issued
23 handicapped license plate, and that, on or about December 13, 2015, he “became aware”
24 that Defendant’s place of business lacked sufficient handicapped parking spaces,
25 designation, signage, or disbursement of those parking spaces “in order to provide the
26 shortest accessible route from parking to an entrance[,]” at Defendant’s place of business.
27 (Doc. 1, Ex. 2 at 9–11, ¶¶ 1, 9, 10.) Plaintiff does not allege that he personally visited
28 Defendant’s business, but alleges that he will avoid visiting the business in the future

1 unless it comes into compliance with the ADA. (*Id.* at 12, ¶ 15.)

2 The complaint alleges that Defendant owns and operates a business at 4502 E. Oak
3 Street, Phoenix, Arizona, 85018, “which is a commercial facility.” (*Id.* at 10, ¶ 2.) The
4 complaint does not identify the nature of Defendant’s business. The complaint alleges
5 that Defendant’s facility has “insufficient handicapped parking spaces, insufficient
6 designation or signage and or insufficient disbursement of such parking spaces[.]” (*Id.* at
7 11, ¶ 10.) The complaint alleges that Defendant has violated Title III of the ADA and its
8 implementing regulations, and seeks declaratory, injunctive, and damages relief as well
9 as the payment of attorney’s fees. (*Id.* at 15–16.)

10 A plaintiff has standing to pursue injunctive relief only if he “is likely to suffer
11 future injury” absent the requested injunction. *City of Los Angeles v. Lyons*, 461 U.S. 95,
12 105 (1983). The threatened injury must be “concrete and particularized”; that is, it must
13 affect the plaintiff “in a personal and individual way.” *Lujan v. Defenders of Wildlife*,
14 504 U.S. 555, 560 & n.1 (1992). An “undifferentiated” interest in ensuring compliance
15 with the law will not suffice. *Id.* at 575 (citing *United States v. Richardson*, 418 U.S.
16 166, 176–77 (1974)); *see also Simon v. E. Kentucky Welfare Rights Org.*, 426 U.S. 26, 40
17 (1976) (“an organization’s abstract concern with a subject that could be affected by an
18 adjudication does not substitute for the concrete injury required by” Article III).

19 In cases under Title III of the ADA, a plaintiff can establish standing to pursue
20 injunctive relief either by showing that “he intends to return to a noncompliant
21 accommodation and is therefore likely to reencounter a discriminatory architectural
22 barrier,” or by showing that “discriminatory architectural barriers deter him from
23 returning to a noncompliant accommodation” that he otherwise would visit. *Chapman*,
24 631 F.3d at 950. In either case, the plaintiff must show that he is personally affected by
25 the barrier. *Id.* (claim for injunctive relief must seek to “vindicate the rights of the
26 particular plaintiff rather than the rights of third parties”). “In determining whether a
27 plaintiff’s likelihood of returning to a defendant is sufficient to confer standing, courts
28 have examined factors such as (1) the proximity of the place of public accommodation to

1 plaintiff's residence, (2) plaintiff's past patronage of defendant's business, (3) the
2 definitiveness of plaintiff's plans to return, and (4) the plaintiff's frequency of travel near
3 defendant." *Harris v. Del Taco, Inc.*, 396 F. Supp. 2d 1107, 1113 (C.D. Cal. 2005)
4 (internal quotation marks and citation omitted).

5 Courts have dismissed Title III claims for lack of standing where the plaintiff fails
6 to assert a personalized injury stemming from the alleged violation. *See Payne v. Chapel*
7 *Hill N. Props., LLC*, 947 F. Supp. 2d 567, 578 (M.D. N.C. 2013) (disability advocacy
8 organization lacked standing to seek injunction under Title III where it failed to identify
9 any member personally affected by the barrier); *Small v. Gen. Nutrition Cos., Inc.*, 388 F.
10 Supp. 2d 83, 90–99 (E.D. N.Y. 2005) (same).

11 Courts have also dismissed Title III claims on standing grounds where the plaintiff
12 fails to plausibly allege that he intends to return to the defendant's accommodation if the
13 barrier to access is removed. The Eleventh Circuit provided examples of such cases in
14 *Shotz v. Cates*, 256 F.3d 1077 (11th Cir. 2001):

15 In *Proctor [v. Prince George's Hosp. Ctr.]*, 32 F. Supp. 2d 830 (D. Md. 1998),
16 the plaintiff admitted that it was purely speculative whether he would have
17 to visit the hospital, given the fact that his only other visit was because of a
18 motorcycle accident. In *Hoepfl [v. Barlow]*, 906 F. Supp. 317 (E.D. Va.
19 1995)], the court stated "because [the plaintiff] now resides in a different
20 state, it is highly unlikely that she will ever again be in a position where any
21 discrimination by [the defendant] against disabled individuals will affect
22 her personally." In *Aikins [v. St. Helena Hosp.]*, 843 F. Supp. 1329 (N.D. Cal.
23 1994)], the plaintiff owned a mobile home at which she stayed only several
24 days a year. During one such visit, she alleged that she was discriminated
25 against by a nearby hospital. The court concluded that the limited amount
26 of time she spent in the area, coupled with the fact that she visited the
27 hospital only because of her husband's illness, failed to suggest a "real or
28 immediate threat" of future discrimination by the hospital. *See also Tyler v.*
The Kansas Lottery, 14 F. Supp. 2d 1220 (D. Kan. 1998) (plaintiff who had
since moved to Wisconsin was unlikely to be harmed by discrimination at
lottery outlets in Kansas).

24 *Id.* at 1081–82 (some internal citations omitted). In *Harris*, 396 F. Supp. 2d 1107, the
25 court dismissed a claim for injunctive relief against a restaurant because the plaintiff
26 lived approximately 570 miles from the restaurant and made no allegation that he was
27 likely to return.

1 Plaintiffs' complaint appears to fall short of establishing standing. It provides no
2 information from which the Court could conclude that Advocates has suffered injury or
3 will suffer injury in the future from Defendant's actions. Advocates appears to be suing
4 on the basis of a generalized interest in ensuring that Defendant complies with the ADA,
5 but such an interest is insufficient to confer standing. *See Lujan*, 504 U.S. at 575; *Simon*,
6 426 U.S. at 40. The fact that Advocates seeks to promote the interests of disabled
7 individuals does not change this analysis. *See Payne*, 947 F. Supp. 2d at 578; *Small*, 388
8 F. Supp. 2d. at 90–99.

9 Nor is there information from which the Court could conclude that Plaintiff
10 Ritzenthaler has suffered injury or will suffer injury in the future from Defendant's
11 actions. Plaintiff Ritzenthaler does not allege that he as ever visited Defendant's
12 business. Indeed, he fails even to identify the nature of Defendant's business. Although
13 he alleges that he will be deterred from visiting Defendant's business in the future, he
14 provides no facts—like those discussed in the cases above—from which the Court can
15 plausibly conclude that he will visit Defendant's business in the future if the barrier to
16 access is removed. Indeed, the complaint alleges only that “Plaintiff, *or an agent of*
17 *Plaintiff*, intends to return to Defendant's Commercial Facility to ascertain whether it
18 remains in violation of the . . . ADA.” (Doc. 1 at 13, ¶ 21 (emphasis added).)

19 For these reasons, the Court orders Plaintiffs to show cause as to why this case
20 should not be dismissed for want of standing. *Cf. Chapman*, 631 F.3d at 955 (“Because
21 Chapman lacked standing at the outset of this litigation to assert the ADA claims, the
22 district court should have dismissed them.”).

23 **IT IS HEREBY ORDERED** that Plaintiff and its attorney individually are
24 directed to show cause why this case should not be dismissed for lack of standing by
25 **September 8, 2016**. Defendant, if it wishes to do so, may file a response by **September**
26 **15, 2016**. Plaintiff may file a reply by **September 22, 2016**.

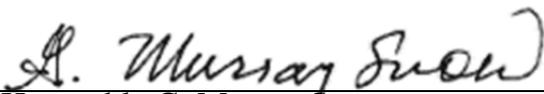
27 **IT IS FURTHER ORDERED** that an Order to Show Cause Hearing is set for
28 **September 29, 2016 at 2:30 p.m.** in Courtroom 602, Sandra Day O'Connor U.S. Federal

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Courthouse, 401 W. Washington St., Phoenix, Arizona 85003-2151.

IT IS FURTHER ORDERED vacating the Scheduling Conference currently set for September 2, 2016.

Dated this 1st day of September, 2016.



Honorable G. Murray Snow
United States District Judge