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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Advocates for Individuals With Disabilities  
10 LLC and David Ritzenthaler,

11 Plaintiffs,

12 v.

13 WSA Properties LLC,

14 Defendant.

No. CV-16-02375-PHX-DGC

**ORDER**

15  
16 Plaintiffs Advocates for Individuals with Disabilities (“AID”) and David  
17 Ritzenthaler filed a complaint against Defendant WSA Properties LLC in Maricopa  
18 County Superior Court. Doc. 1. The complaint alleges violations of both federal and  
19 state disabilities law, and Plaintiffs seek declaratory, injunctive, and monetary relief. *Id.*  
20 at 17-18. On July 15, 2016, Defendant removed the case to this Court, asserting that the  
21 Court has subject matter jurisdiction over Plaintiffs’ federal claims. Doc. 1. On  
22 August 15, 2016, the Court issued an order requiring Plaintiffs to show cause why this  
23 case should not be dismissed for lack of standing (“Order”). Doc. 13. After receiving an  
24 extension of time, Plaintiffs responded. Doc. 24. For the reasons that follow, the Court  
25 finds that Plaintiffs lack standing to pursue their claims in this Court. Because the  
26 standing analysis for state court differs from federal analysis, the Court will remand this  
27 case to state court.  
28

1     **I.     Background.**

2             Attorneys Peter Strojnik and Fabian Zazueta have filed numerous claims against  
3 local businesses alleging violations of the Americans with Disabilities Act (“ADA”) and  
4 similar state statutes. Since March 2016, 162 of their cases have been filed in or removed  
5 to this Court.<sup>1</sup> These cases all appear to assert identical allegations – that the defendant  
6 business (the nature of which usually is not identified in the complaint) has violated the  
7 ADA by having inadequate signage or parking spaces for disabled persons.

8             Concerned about these very general allegations, the Court entered an order on  
9 August 15, 2016, requiring Plaintiffs to show why this case should not be dismissed for  
10 lack of standing. The Court noted:

11                     Plaintiff [AID] makes no allegations in the complaint regarding its  
12 status, nature, or interest in this case. Plaintiff David Ritzenthaler alleges  
13 that he is legally disabled, that he has a state-issued handicapped license  
14 plate, and that, on or about March 15, 2016, he “became aware” that there  
15 were insufficient handicapped parking spaces and signage at Defendant’s  
16 place of business. Plaintiff does not allege that he personally visited  
17 Defendant’s business, but alleges that he will avoid visiting the business in  
18 the future unless it comes into compliance with the ADA.

19             Doc. 13 (citations omitted). Because these general allegations failed to show that  
20 Plaintiffs have “concrete and particularized” injuries that affect them “in a personal and  
21 individual way,” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 & n.1 (1992), the  
22 Court ordered Plaintiffs to file a memorandum showing standing by August 29, 2016.  
23 Instead, Plaintiffs filed a notice of settlement on August 26, 2016, and asked the Court to  
24 vacate the Order. Doc. 15. The Court declined, noting that this case has not been  
25 dismissed and that Plaintiffs have many other cases before the undersigned judge that  
26 present the same standing concerns. Doc. 18. The Court directed Plaintiffs to respond as  
27 ordered on August 29, 2016.

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28             <sup>1</sup> Fifty-eight of these complaints have been brought on behalf of AID. The remaining complaints are brought on behalf of either Advocates for American Disabled Individuals LLC or Advocates for Individuals with Disabilities Foundation Incorporated.

1 Plaintiffs instead filed a motion for an extension of time to respond, which the  
2 Court granted. Doc. 20. Plaintiffs filed their response to the Order on September 12,  
3 2016. Doc. 24. Plaintiffs addressed AID’s associational standing, said nothing about  
4 Ritzenthaler’s standing, and stated that they intend to file an amended complaint or  
5 supplemental pleading. *Id.* No motion to amend or supplement has been filed. *Id.*

6 **II. Article III Standing.**

7 “[T]o invoke the jurisdiction of the federal courts, a disabled individual claiming  
8 discrimination must satisfy the case or controversy requirement of Article III by  
9 demonstrating his standing to sue at each stage of the litigation.” *Chapman v. Pier 1*  
10 *Imports (U.S.) Inc.*, 631 F.3d 939, 946 (9th Cir. 2011) (en banc). “Federal courts are  
11 required *sua sponte* to examine jurisdictional issues such as standing.” *Id.* at 954  
12 (quotation marks, citation, and brackets omitted). After reviewing Plaintiffs’ response to  
13 the Order, the Court finds that neither AID nor Ritzenthaler have Article III standing to  
14 pursue this suit.

15 **A. AID Does Not Have Article III Standing.**

16 An organization can bring suit on its own behalf or on behalf of its members. *See*  
17 *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 169 (2000).  
18 In its response to the Order, AID asserts that it has standing to sue on behalf of its  
19 members; it claims no independent injury as an organization. Doc. 24 at 1.

20 The Supreme Court has established a three-part test for the standing of an  
21 organization to sue on behalf of its members:

22 An association has standing to bring suit on behalf of its members when its  
23 members would have standing to sue in their own right, the interests at  
24 stake are germane to the organization’s purpose, and neither the claim  
25 asserted nor the relief requested requires individual members’ participation  
in the lawsuit.

26 *Friends of the Earth*, 528 U.S. at 169.<sup>2</sup>

27 \_\_\_\_\_  
28 <sup>2</sup> Because the Court finds that AID has not identified any member with standing to  
sue in his or her own right, it need not consider the other prongs of this test.

1 To show that at least one of its members has standing to sue in his or her own  
2 right, AID must show that the member has suffered an injury-in-fact. Furthermore, “an  
3 organization suing as representative [must] include at least one member with standing to  
4 present, in his or her own right, the claim (or the type of claim) pleaded by the  
5 association.” *United Food & Commercial Workers Union Local 751 v. Brown Grp., Inc.*,  
6 517 U.S. 544, 555 (1996).

7 The text of Plaintiffs’ response does not identify any members of AID, but a  
8 caption to one of its sections suggests that David Ritzenthaler is a member. Doc. 24 at 2.  
9 AID does nothing, however, to show that Ritzenthaler has suffered an injury-in-fact.  
10 Plaintiffs instead make a simple, conclusory assertion:

11 The lack of signage [at Defendant’s property] is a deterrent to disabled  
12 individuals’ (including members of AID who are identified and some not  
13 yet identified) use of the Lot, because it renders it more difficult for them to  
14 identify which, if any parking spots are van accessible. Members of AID  
15 would like to, and intends to use the Lot, but the lack of van-accessible  
signage that is at least 60 inches above the ground is a deterrent and barrier  
to access.

16 *Id.* AID also asserts that it has unidentified members who are disabled or have disabled  
17 children, and who reside in the greater Phoenix area. *Id.* at 2. These members allegedly  
18 “travel on the Valley’s streets” and “have lawful disability-parking plates or placards for  
19 their vehicles.” *Id.* AID provides no actual examples of such persons being deterred  
20 from using Defendant’s public accommodation because it lacks a sign that is 60 inches  
21 above the ground. AID offers only conclusory assertions.

22 AID has not shown that it has organizational standing to pursue this action. The  
23 discussion below shows that Ritzenthaler does not have standing, and AID has not  
24 identified any other members who “would have standing to sue in their own right.”  
25 *Friends of the Earth*, 528 U.S. at 169; *see also Payne v. Chapel Hill N. Properties, LLC*,  
26 947 F. Supp. 2d 567, 577 (M.D.N.C. 2013) (granting motion to dismiss for lack of  
27 standing when organization identified only one member in its complaint and was unable  
28 to show that she had standing to sue in her own right). AID may be an organization

1 interested in enforcement of disability discrimination laws, but an undifferentiated  
2 interest in ensuring compliance with the law does not suffice. *Lujan*, 504 U.S. at 575  
3 (citing *United States v. Richardson*, 418 U.S. 166, 176-77 (1974)); *see also Simon v. E.*  
4 *Kentucky Welfare Rights Org.*, 426 U.S. 26, 40 (1976) (“an organization’s abstract  
5 concern with a subject that could be affected by an adjudication does not substitute for  
6 the concrete injury required by” Article III).

7 **B. David Ritzenthaler Does Not Have Article III Standing.**

8 An individual plaintiff must satisfy three elements to establish Article III standing:  
9 (1) an injury-in-fact, (2) causation between the injury and the allegedly wrongful conduct,  
10 and (3) that the injury is likely to be redressed by a favorable decision from the court.  
11 *Lujan*, 504 U.S. at 560. Plaintiffs have the burden of proving all three elements. *Id.* at  
12 561. Plaintiffs correctly note that “[t]he Supreme Court has instructed us to take a broad  
13 view of constitutional standing in civil rights cases, especially where, as under the ADA,  
14 private enforcement suits are the primary method of obtaining compliance with the Act,”  
15 *Doran v. 7-Eleven, Inc.*, 524 F.3d 1034, 1039 (9th Cir. 2008), but this does not relieve a  
16 plaintiff of his burden to show an injury-in-fact, *see Chapman*, 631 F.3d at 946.

17 **1. Injury-In-Fact.**

18 An injury-in-fact is “(a) concrete and particularized, and (b) actual or imminent,  
19 not conjectural or hypothetical.” *Lujan*, 504 U.S. at 560 (internal quotations and citations  
20 omitted). This includes a “requirement that a party seeking review must allege facts  
21 showing that he is himself adversely affected.” *Sierra Club v. Morton*, 405 U.S. 727, 740  
22 (1972). Additionally, to establish standing to seek injunctive relief, a party must show  
23 that he “is likely to suffer future injury” absent the requested injunction. *City of Los*  
24 *Angeles v. Lyons*, 461 U.S. 95, 105 (1983).

25 Ritzenthaler alleges that on a particular date he “*became aware* that there were”  
26 ADA violations at Defendant’s business. Doc. 1 at 13 (emphasis added). The complaint  
27 alleges that Ritzenthaler has “actual knowledge of at least one barrier related to [his]  
28 disability[.]” *Id.* at 14. But the complaint does not allege how Ritzenthaler learned of the

1 alleged barrier, whether he has ever visited Defendant's business, whether he lives or  
2 travels anywhere near the business, or even whether he patronizes businesses of the same  
3 type. The complaint does not even identify the nature of Defendant's business. *Id.*  
4 Instead, consistent with the boilerplate nature of the complaint and apparently to cover  
5 the waterfront, the complaint alleges that Plaintiff may visit the site "for business,  
6 pleasure, medical treatment or other commercial purposes." *Id.* at 14. A photograph of  
7 Defendant's property attached to Plaintiffs' response suggests that the building houses an  
8 endocrinology medical practice. Doc. 24 at 6. The complaint does not allege that  
9 Ritzenthaler uses or needs an endocrinologist.<sup>3</sup>

10 Thus, this case squarely presents the question of whether Ritzenthaler must have  
11 personally visited Defendant's property to have standing to assert ADA violations. This  
12 question was raised in the Court's Order (Doc. 13 at 4), but Plaintiffs chose not to address  
13 it. The Court can only conclude that Ritzenthaler has not visited Defendant's business  
14 and seeks to establish standing merely on the basis of his second-hand knowledge of  
15 barriers. This is consistent with other cases attorney Peter Strojnik has litigated. *See,*  
16 *e.g., Brooke v. Peterson*, --- F.Supp.3d ---, 2016 WL 2851440, at \*2 (C.D. Cal. May 13,  
17 2016) ("Plaintiff never alleges or otherwise asserts that she has visited the hotels.");  
18 *Brooke v. Kalthia Grp. Hotels*, No. 15CV1873-GPC(KSC), 2015 WL 7302736, at \*5  
19 (S.D. Cal. Nov. 18, 2015) (Plaintiff called a hotel and learned it did not have a pool lift,  
20 but never visited the site). Although Plaintiffs' complete failure to address this issue has  
21 provided the Court with no assistance, the Court has reviewed relevant case law and  
22 concludes that Ritzenthaler cannot establish injury-in-fact.

23 In *Chapman*, the Ninth Circuit described the circumstances under which an ADA  
24 plaintiff experiences injury-in-fact:

25 \_\_\_\_\_  
26 <sup>3</sup> The complaint alleges that Ritzenthaler's "agents" verified that Defendant's  
27 property was not ADA compliant. *Id.* at 14. It does not identify these agents, but the  
28 Court assumes they are ADA experts like those used by attorney Peter Strojnik in other  
ADA cases. *See Brooke v. Peterson*, --- F.Supp.3d ---, 2016 WL 2851440, at \*2 (C.D.  
Cal. May 13, 2016); *Brooke v. Kalthia Grp. Hotels*, No. 15CV1873-GPC(KSC), 2015  
WL 7302736, at \*5 (S.D. Cal. Nov. 18, 2015).

1 Under the ADA, when a disabled person *encounters an accessibility*  
2 *barrier* violating its provisions, it is not necessary for standing purposes  
3 that the barrier completely preclude the plaintiff from entering or from  
4 using a facility in any way. Rather, the barrier need only interfere with the  
5 plaintiff's "full and equal enjoyment" of the facility. 42 U.S.C. § 12182(a).

6 \* \* \*

7 Of course, a "barrier" will only amount to such interference *if it affects the*  
8 *plaintiff's full and equal enjoyment of the facility* on account of his  
9 particular disability. Because the ADAAG establishes the technical  
10 standards required for "full and equal enjoyment," if a barrier violating  
11 these standards relates to a plaintiff's disability, it will impair the plaintiff's  
12 full and equal access, which constitutes "discrimination" under the ADA.  
13 That discrimination satisfies the "injury-in-fact" element of *Lujan*. As we  
14 have held, once a disabled plaintiff *has encountered a barrier* violating the  
15 ADA, "that plaintiff will have a 'personal stake in the outcome of the  
16 controversy' so long as his or her suit is limited to barriers related to that  
17 person's particular disability."

18 *Chapman*, 631 F.3d at 947 (emphasis added, footnote and some citations omitted).

19 Under this language, an ADA plaintiff must actually encounter a barrier to  
20 experience injury-in-fact. Such a requirement comports with the Article III demand that  
21 a plaintiff's injury be "concrete and particularized," "actual or imminent," and not  
22 "hypothetical," and that it "affect the plaintiff in a personal and individual way." *Lujan*,  
23 504 U.S. at 561 & n. 1.

24 Although Plaintiffs' counsel declined to address the issue in this case, they have  
25 argued in other cases, and appear to assert in the complaint, that mere knowledge of a  
26 barrier is enough to satisfy the injury-in-fact requirement, even if the plaintiff has never  
27 personally encountered the barrier. *See Brooke v. Kalthia Grp. Hotels*, 2015 WL  
28 7302736, at \*4-5. The Court does not agree. Under this theory, a disabled person in  
Arizona could learn of an architectural barrier at a facility in Tennessee which the person  
has never visited and never plans to visit, and yet would suffer an injury-in-fact by the  
mere knowledge. Such an injury, if it could be called an injury at all, would not be  
concrete, particularized, actual, or imminent. And even if the person firmly resolved that

1 he would never visit the Tennessee facility because of the barrier, any future injury from  
2 the barrier would be purely hypothetical.

3 In other cases, Plaintiffs' counsel have looked to language from several Ninth  
4 Circuit cases to argue that mere knowledge of a barrier is sufficient for ADA standing. It  
5 is true that these cases contain language stating that a plaintiff has suffered injury when  
6 he has "personally encountered *or had personal knowledge*" of discriminatory barriers.  
7 *Doran*, 524 F.3d at 1041 (emphasis added). But the context of these statements makes  
8 clear that they do not confer standing on Ritzenthaler in this case.

9 For example, in *Doran v. 7-Eleven, Inc.*, the plaintiff actually visited a particular  
10 7-Eleven store between 10 and 20 times, encountered discriminatory barriers, and was  
11 deterred from returning until the barriers were removed. *Id.* at 1037. The Ninth Circuit  
12 held that "Doran has suffered an injury that is concrete and particularized because he  
13 alleged in his amended complaint that he personally suffered discrimination as a result of  
14 the barriers in place during his visits to 7-Eleven and that those barriers have deterred  
15 him on at least four occasions from patronizing the store." *Id.* at 1040. The Ninth Circuit  
16 explained that this actual injury "gets him inside the courthouse door and brings his  
17 Article III case forward for our judicial evaluation." *Id.* 1041-42. The Ninth Circuit then  
18 had to decide "the scope of barriers that Doran may challenge." *Id.* at 1041. Was he  
19 limited to barriers he personally had encountered, or could he also challenge barriers he  
20 learned about during discovery? The court held that the additional barriers could be  
21 included in the lawsuit:

22 it is entirely plausible that the reason he did not know the full scope of 7-  
23 Eleven's ADA violations when he filed his complaint is that the violations  
24 he did know about deterred him from conducting further first-hand  
25 investigation of the store's accessibility. . . . [I]t would be ironic if not  
26 perverse to charge that the natural consequence of this deterrence, the  
27 inability to personally discover additional facts about the defendant's  
28 violations, would defeat that plaintiff's standing to challenge other  
violations at the same location that subsequently come to light.

*Id.* at 1042.

1           This holding makes practical sense. If a plaintiff has suffered an injury-in-fact by  
2 personally encountering a discriminatory barrier, he has standing to bring an ADA case in  
3 federal court. Once the case has been filed, it should address all barriers to the plaintiff's  
4 access that the defendant has erected. As the Ninth Circuit explained in *Chapman*, "an  
5 ADA plaintiff who has standing to sue because he has been discriminated against in one  
6 aspect of a public accommodation may, in one lawsuit, obtain an injunction to prevent  
7 impending discrimination throughout the accommodation." 631 F.3d at 952. *Chapman*  
8 emphasized that this holding "in no way relieves plaintiffs from the constitutionally  
9 imposed burden of demonstrating an injury-in-fact and a sufficient likelihood of repeated  
10 harm." *Id.* at 953.

11           The Court cannot conclude from cases like *Doran* or *Chapman* that a plaintiff  
12 suffers an injury-in-fact when he has never visited the defendant's property and merely  
13 learns of a barrier through another source. Ritzenthaler's unexplained knowledge of the  
14 alleged barriers in this case has injured him no more than the Arizonan who learns of an  
15 architectural barrier in Tennessee, as discussed above.

16           Other Ninth Circuit cases are consistent with this conclusion. In *Pickern v.*  
17 *Holiday Quality Foods Inc.*, 293 F.3d 1133, 1138 (9th Cir. 2002), the court found that the  
18 plaintiff had standing when he was deterred from returning to a Holiday Foods store in  
19 Paradise, California, which he had previously visited on several occasions. According to  
20 the court, "under the ADA, once a plaintiff has actually become aware of discriminatory  
21 conditions existing at a public accommodation, and is thereby deterred from visiting or  
22 patronizing that accommodation, the plaintiff has suffered an injury." *Id.* at 1136-37.  
23 The plaintiff need not make the "futile gesture" of returning to the store again. *Id.* The  
24 court did not make clear what was necessary to show actual awareness, but it is clear that  
25 the plaintiff's awareness in *Pickern* came from personally encountering the barriers:

26           [Plaintiff] has visited Holiday's Paradise store in the past and states that he  
27 has actual knowledge of the barriers to access at that store. [Plaintiff] also  
28 states that he prefers to shop at Holiday markets and that he would shop at  
the Paradise market if it were accessible. This is sufficient to establish

1 actual or imminent injury for purposes of standing.  
2 *Id.* at 1138. As another court has observed, *Pickern* “did not hold that an ADA plaintiff  
3 has standing if she is deterred from visiting a noncompliant place of accommodation even  
4 if she has never visited the accommodation.” *Brooke v. Peterson*, 2016 WL 2851440, at  
5 \*4.

6 In *D’Lil v. Best Western Encina Lodge & Suites*, 538 F.3d 1031, 1034 (9th Cir.  
7 2008), the Ninth Circuit found that a plaintiff had standing when she visited a Santa  
8 Barbara hotel and encountered multiple barriers to access. According to the plaintiff, she  
9 had plans to return to Santa Barbara and desired to stay at the hotel. *Id.* at 1037. The  
10 court found that the plaintiff need not “engage in the ‘futile gesture’ of visiting or  
11 returning to an inaccessible place of public accommodation in order to satisfy the  
12 standing requirement.” *Id.* While the court referred to “visiting or returning,” it is  
13 noteworthy that the facts of the case concerned an individual who had personally visited  
14 the public accommodation and encountered discriminatory barriers. The only question  
15 before the Ninth Circuit was whether the plaintiff had an intent to return sufficient to  
16 make her alleged injury “actual or imminent[.]” *Id.* at 1036. Because she did intend to  
17 return if the barriers were removed, the court found that she had standing. *Id.* at 1039.

18 Finally, the Court notes that the Central District of California recently addressed  
19 standing in a similar ADA case brought by Mr. Strojnik. *See Brooke v. Peterson*, 2016  
20 WL 2851440. The plaintiff in that case alleged that Best Western International violated  
21 the ADA by not having a lift in its pool and Jacuzzi. *Id.* at \*1. The plaintiff had never  
22 visited the defendant’s hotel, but instead alleged that she called the hotel and was told it  
23 was not equipped with a lift, which was then verified by her expert. *Id.* The court found  
24 this insufficient for standing:

25 Binding precedent supports that under any theory of standing, including the  
26 deterrent effect doctrine, an ADA plaintiff must have previously visited a  
27 noncompliant place of accommodation to have an injury-in-fact under  
28 Article III. Without ever visiting the hotels and encountering the barriers,  
Plaintiff’s injury is not particularized and concrete. And without ever  
visiting the hotels and encountering the barriers, Plaintiff’s injury is not

1 actual or imminent. Whether the case law requires Plaintiff to *encounter*  
2 the barriers or if it is enough that Plaintiff have *personal, percipient*  
3 *knowledge* of the barriers doesn't matter here, as Plaintiff has never even  
4 visited the hotels. Accordingly, without a "particular and concrete" and an  
5 "actual or imminent" injury, Plaintiff lacks standing under Article III to  
6 bring her ADA claims.

6 *Id.* at \*6 (emphasis in original, internal citations and quotations omitted).

7 Admittedly, *Pickern* and *D'Lil* do contain broad language that could be read to  
8 suggest that injury-in-fact occurs even when a plaintiff has never visited a facility,  
9 provided he would actually do so were he not deterred by discriminatory barriers. That  
10 was not the holding of *D'Lil* or *Pickern*, but even if such a broad reading were  
11 entertained, it would not help Ritzenthaler. As noted previously in this order, he provides  
12 no facts from which the Court can conclude that he has ever sought, for any reason, to  
13 visit Defendant's endocrinology office, or that he intends to do so in the future. The  
14 complaint does allege generally that "[t]he existence of barriers deters Plaintiff and other  
15 disabled persons from conducting business or returning to Defendant's Public  
16 Accommodation." Doc. 1 at 14. It also alleges that "Plaintiff, *or an agent of Plaintiff*,  
17 intends to return to Defendant's Public Accommodation to ascertain whether it remains in  
18 violation of the AzDA and the ADA." *Id.* at 15 (emphasis added). But these bare  
19 allegations, unsupported by any facts suggesting that Ritzenthaler himself intends to visit  
20 the property, are insufficient to satisfy even a broad reading of *D'Lil* and *Pickern*.

21 In determining whether a plaintiff's likelihood of visiting or returning to a facility  
22 is sufficient to confer standing, courts have examined factors such as "(1) the proximity  
23 of the place of public accommodation to plaintiff's residence, (2) plaintiff's past  
24 patronage of defendant's business, (3) the definitiveness of plaintiff's plans to return, and  
25 (4) the plaintiff's frequency of travel near defendant." *Harris v. Del Taco, Inc.*, 396 F.  
26 Supp. 2d 1107, 1113 (C.D. Cal. 2005) (citation and quotation marks omitted). These  
27 factors were specifically identified in the Court's Order (Doc. 13 at 2-3), but Ritzenthaler  
28 did not address them in his response. Doc. 24.

1 The Court concludes that Ritzenthaler has failed to show injury-in-fact. He  
2 therefore lacks standing to pursue his claims in federal court.<sup>4</sup>

3 **2. Other Defects in Plaintiffs' Complaint.**

4 The Ninth Circuit has also made clear that an ADA plaintiff must plead facts  
5 linking the defendant's discriminatory barriers to the plaintiff's injury. Merely listing  
6 ADA violations at the defendant's property "cannot substitute for the factual allegations  
7 required in the complaint to satisfy Article III's requirement of an injury-in-fact."  
8 *Chapman*, 631 F.3d at 955. A plaintiff must identify "how any of the alleged violations  
9 threatens to deprive him of full and equal access due to his disability if he were to  
10 return," or "how any of them deter him from visiting the [defendant's facility] due to his  
11 disability." *Id.*

12 Plaintiffs' complaint does not even identify the specific barriers that allegedly  
13 exist at Defendant's premises. It instead alleges only a list of possibilities:

14 insufficient handicapped parking spaces, insufficient designation or signage  
15 and or insufficient disbursement of such parking spaces in order to provide  
16 the "shortest accessible route from parking to an entrance", specifically but  
17 not limited to parking spaces by the designation "van accessible" and or  
18 fails to maintain the minimum height of 60 inches (1525 mm) above the  
finish floor or ground surface measured to the bottom of the sign.

19 Doc. 1 at 13. By using the word "or" and the phrase "and or" in this description, the  
20 complaint fails to identify which ADA violations allegedly exist at Defendant's property.  
21 The complaint continues: "[w]ithout the presence of adequate handicapped parking  
22 spaces, sufficient designation or signage and or sufficient disbursement of such parking  
23 spaces, Plaintiff's disability prevents Plaintiff and other disabled persons from equal  
24 enjoyment of the Defendant's Public Accommodation." *Id.* at 14. Again, the disjunctive  
25 nature of this list fails to specify barriers that have injured Ritzenthaler. As in *Chapman*,

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26  
27 <sup>4</sup> The Court is aware of other cases within this district that have reached a different  
28 conclusion. *See, e.g., Brooke v. Airport Hotel, LLC*, No. 2:15-CV-1149-HRH, 2015 WL  
5444286 (D. Ariz. Sept. 16, 2015). The Court respectfully disagrees with these decisions  
for the reasons set forth above.

1 the complaint “leaves the federal court to guess which, if any, of the alleged violations  
2 deprived him of the same full and equal access that a person who is not wheelchair bound  
3 would enjoy[.]” 631 F.3d at 955. Faced with this same defect in *Chapman*, the Ninth  
4 Circuit remanded with instructions to dismiss the complaint for lack of standing. The  
5 Court likewise concludes that Plaintiffs lack Article III standing.

### 6 **3. The Importance of Standing in These Cases.**

7 Article III’s injury-in-fact requirement is particularly relevant in this and related  
8 cases. As noted, Plaintiffs’ counsel have more than 160 cases pending in this Court.  
9 They reportedly have filed more than a thousand similar cases in state court.<sup>5</sup> These  
10 filings all appear to be based on the plaintiff’s awareness of a barrier – an awareness  
11 apparently acquired when persons associated with Plaintiffs’ counsel find non-compliant  
12 locations. The Court cannot conclude that this kind of mass-filing based on an agent’s  
13 search for non-compliant properties constitutes the individual, particularized injury  
14 necessary for Article III standing. As already noted, a mere interest in ensuring  
15 compliance with anti-discrimination laws is not sufficient. *Lujan*, 504 U.S. at 575.

### 16 **III. Leave to Amend or Supplement the Pleadings.**

17 Plaintiffs’ response states that they intend to amend or supplement their complaint,  
18 but they have not moved to amend despite the Court’s clear notice that it plans to rule on  
19 their standing. Doc. 24 at 3-6. Plaintiffs also suggest that they may remove their federal  
20 ADA claims by amendment and then seek remand to state court. Indeed, one section of  
21 their response is titled “Remand is Also Appropriate.” *Id.* at 5. Plaintiffs discuss a Ninth  
22 Circuit case in which the plaintiff eliminated federal claims and obtained a remand, and  
23 say this is “precisely what the Plaintiff and its counsel intend to do here.” *Id.* at 6.

24 If Plaintiffs did seek to amend their complaint in response to the Order, the Court  
25 would deny the request. A district court may deny leave to amend when it finds “undue  
26 delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure

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27  
28 <sup>5</sup> See <http://kjzz.org/content/347212/group-targets-phoenix-area-businesses-flurry-ada-lawsuits> (last visited Sept. 27, 2016).

1 deficiencies by amendments previously allowed, undue prejudice to the opposing party  
2 by virtue of allowance of the amendment, futility of amendment, etc.” *Foman v. Davis*,  
3 371 U.S. 178, 182 (1962).

4 As already noted, Plaintiffs’ counsel has more than 160 ADA cases pending in this  
5 Court and hundreds more in state court. Mr. Strojnik has brought similar complaints in  
6 other districts, and they too have lacked standing. *See Brooke v. Peterson*, 2016 WL  
7 2851440; *Brooke v. Kalthia Grp. Hotels*, 2015 WL 7302736. Indeed, Mr. Strojnik  
8 brought more than 90 cases in the Central District of California. *Brooke v. Peterson*,  
9 2016 WL 2851440, at \*1.

10 The complaints in this Court appear to be boilerplate. *Compare* Doc. 1 with  
11 *Advocates for Individuals with Disabilities, LLC v. Home Depot USA Inc.*, Case 2:16-cv-  
12 01002-ROS, Doc. 1. The complaints make little effort to establish any real injury. *Id.*  
13 And Plaintiffs’ counsel apparently follow their boilerplate complaints with a demand that  
14 defendants each pay \$7,500 to settle. *See Ritzenthaler v. Stratis-Mesa Properties, LLC*,  
15 16-CV-01718-ROS, Doc. 15-1 at 3-6. These practices suggest an abuse of the judicial  
16 system.

17 Plaintiffs’ complaint in this case offers only conclusory statements about  
18 Plaintiffs’ alleged injuries, with no factual support. These deficiencies were explicitly  
19 noted in the Court’s Order. Doc. 13. And yet, despite four full weeks to prepare a  
20 response, Plaintiffs did not even discuss Ritzenthaler’s standing and alleged no injury to  
21 AID. These are matters Plaintiffs’ counsel should have considered carefully before filing  
22 these cases, and certainly before making settlement demands. *See* Fed. R. Civ. P. 11(b).  
23 There is no excuse for their inability to address them in response to the Order.<sup>6</sup>

24 But this is not the only indication that Plaintiffs’ counsel are taking their judicial  
25 responsibilities lightly. In three other cases pending before the undersigned judge,  
26 Plaintiffs’ counsel have failed to file timely Rule 26(f) reports despite a court order

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28 <sup>6</sup> Apparently, Mr. Strojnik’s failure to provide helpful input on ADA standing  
issues is not confined to this case. *See Brooke v. Peterson*, 2016 WL 2851440, at \*2-3.

1 directing them to initiate the Rule 26(f) conference and file the report by a specific  
2 deadline. See CV-16-1025, CV-16-2375, CV-16-2595. The Court’s staff has had to  
3 prompt Plaintiffs’ counsel to comply with this most basic of obligations. Two days ago,  
4 the Court’s staff was contacted four times in one day by staff members in Plaintiffs’  
5 counsel’s office to address various points of confusion in pending cases. And this is only  
6 with respect to cases pending before this judge. The Court does not know how Plaintiffs’  
7 counsel believe in good faith that they can discharge their duties to courts and their  
8 clients in hundreds of pending cases.

9 Given this conduct and Plaintiffs’ delay in providing any colorable response to the  
10 Court’s standing concerns, the Court would deny Plaintiffs leave to amend on the basis of  
11 undue delay, bad faith, and dilatory motive. *Foman*, 371 U.S. at 182.

#### 12 **IV. Remand.**

13 The removal statute provides that “[i]f at any time before final judgment it appears  
14 that the district court lacks subject matter jurisdiction [over a case removed from state  
15 court], the case shall be remanded.” 28 U.S.C.A. § 1447(c). This applies to cases that  
16 lack standing. *Polo v. Innoventions Int’l, LLC*, No. 14-55916, 2016 WL 4394586, at \*3  
17 (9th Cir. Aug. 18, 2016) (“a removed case in which the plaintiff lacks Article III standing  
18 must be remanded to state court under § 1447(c”).

19 The Ninth Circuit has suggested that remand may not be necessary where it would  
20 be futile, that is, where the plaintiff clearly would lack standing in state court as well.  
21 *Bell v. City of Kellogg*, 922 F.2d 1418, 1424 (9th Cir. 1991). But the Supreme Court and  
22 Ninth Circuit have cast doubt on this possible course of action. The Supreme Court has  
23 noted that the literal words of § 1447(c), on their face, give no discretion to dismiss rather  
24 than remand an action. *Int’l Primate Prot. League v. Administrators of Tulane Educ.*  
25 *Fund*, 500 U.S. 72, 89 (1991) (internal quotation omitted). The Ninth Circuit has also  
26 noted that “the *Bell* rule has been questioned, and may no longer be good law.” *Polo*,  
27 2016 WL 4394586, at \*4; see also *Hill v. Vanderbilt Capital Advisors, LLC*, 702 F.3d  
28 1220, 1226 (10th Cir. 2012).

1 Even if the Court retains the ability to dismiss rather than remand, it would apply  
2 only where the court is “absolutely certain” that remand would be futile. *Bell*, 922 F.2d  
3 at 1425; *Maine*, 876 F.2d at 1054. That is not the case here. The constraints of Article  
4 III “do not apply to state courts, and accordingly the state courts are not bound by the  
5 limitations of a case or controversy or other federal rules of justiciability even when they  
6 address issues of federal law.” *ASARCO Inc. v. Kadish*, 490 U.S. 605, 617 (1989). A  
7 plaintiff who fails to establish Article III standing to bring suit in federal court is not  
8 necessarily barred from pursuing the same suit in state court.

9 Unlike more rigid Article III requirements, Arizona law affords trial courts  
10 discretion when addressing standing:

11 We have previously determined that the question of standing in Arizona is  
12 not a constitutional mandate since we have no counterpart to the “case or  
13 controversy” requirement of the federal constitution. In addressing the  
14 question of standing, therefore, we are confronted only with questions of  
15 prudential or judicial restraint. We impose that restraint to insure that our  
16 courts do not issue mere advisory opinions, that the case is not moot and  
17 that the issues will be fully developed by true adversaries. Our court of  
18 appeals has explained that these considerations require at a minimum that  
19 each party possess an interest in the outcome. Thus, the question of  
20 standing in Arizona cases such as this need not be determined by rigid  
21 adherence to the three-prong [federal test], although those factors may be  
22 considered.

23 *Armory Park Neighborhood Ass’n v. Episcopal Cmty. Servs. in Arizona*, 712 P.2d 914,  
24 919 (Ariz. 1985) (internal citations omitted); *see also Bennett v. Brownlow*, 119 P.3d 460,  
25 462 (Ariz. 2005) (standing can be waived by Arizona courts in rare circumstances).

26 Given the more flexible standing requirements of Arizona law, the Court cannot  
27 be “absolutely certain” that Plaintiffs lack standing in state court. *Bell*, 922 F.2d at 1425.  
28 As a result, the Court will remand rather than dismiss this case. In remanding, the Court  
will not dismiss the federal ADA claims because state courts have concurrent jurisdiction  
over those claims and the state courts may decide Plaintiffs have sufficient standing to  
pursue them. *See Yellow Freight Sys., Inc. v. Donnelly*, 494 U.S. 820, 821 (1990) (“we

1 conclude that Congress did not divest the state courts of their concurrent authority to  
2 adjudicate [civil actions brought under Title VII of the Civil Rights Act of 1964]”);  
3 *Hapgood v. City of Warren*, 127 F.3d 490, 494 (6th Cir. 1997) (“State courts have  
4 concurrent jurisdiction over ADA claims”); *Jones v. Illinois Cent. R. Co.*, 859 F. Supp.  
5 1144, 1145 (N.D. Ill. 1994) (interpreting *Yellow Freight*, “it necessarily follows that the  
6 state courts have concurrent jurisdiction over ADA claims as well”); *Krouse v. Am.*  
7 *Sterilizer Co.*, 872 F. Supp. 203, 205 (W.D. Pa. 1994) (“it appears to be solidly  
8 established that state courts have concurrent jurisdiction over ADA cases”).

9 **IT IS ORDERED** that this action is remanded to Maricopa County Superior  
10 Court.

11 Dated this 28th day of September, 2016.

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16 David G. Campbell  
17 United States District Judge  
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