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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ROBIN K. FORTYUNE,)	Case No. CV 11-06644 DDP (JCGx)
)	
Plaintiff,)	ORDER DENYING DEFENDANT'S MOTION
)	TO DISMISS
v.)	
)	
CITY OF LOMITA,)	[Docket No. 6]
)	
Defendant.)	
_____)	

Presently before the court is Defendant City of Lomita's Motion to Dismiss Plaintiff Robin K. Fortyune's Complaint ("Motion"). After reviewing the parties' moving papers and considering the arguments therein, the court DENIES the City's Motion.

I. BACKGROUND

Plaintiff Robyn K. Fortyune is a California resident with physical disabilities. She alleges that Defendant City of Lomita has violated the Americans with Disabilities Act ("ADA") and the California Disabled Persons Act ("DPA"), by failing to provide any handicap-accessible public parking in its on-street diagonal

1 stalls.¹ Plaintiff contends that the City thereby denies persons
2 with disabilities full and equal access to its programs and
3 facilities. (Compl. ¶¶ 1, 5.)

4 Plaintiff brought suit in Los Angeles County Superior Court,
5 on July 1, 2011, and the City removed the action to federal court,
6 on August 12, 2011. (Dkt. No. 1.) The City then filed this Motion
7 to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6),
8 alleging that accessible on-street parking in the public right-of-
9 way is not required under the ADA or its implementing regulations.
10 (Dkt. No. 6.)

11 **II. LEGAL STANDARD**

12 Federal Rule of Civil Procedure 12(b)(6) requires courts to
13 dismiss claims for which no relief can be granted. When
14 considering a 12(b)(6) motion, "all allegations of material fact
15 are accepted as true and should be construed in the light most
16 favorable to the plaintiff." Resnick v. Hayes, 213 F.3d 443, 447
17 (9th Cir. 2000). In Ashcroft v. Iqbal, the Supreme Court explained
18 that a court should first "identify[] pleadings that, because they
19 are no more than conclusions, are not entitled to the assumption of
20 truth." 129 S. Ct. 1937, 1950 (2009). Next, the court should
21 identify the complaint's "well-pleaded factual allegations, . . .
22 assume their veracity and then determine whether they plausibly
23 give rise to an entitlement to relief." Id.; see also Moss v. U.S.
24 Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009) ("In sum, for a
25 complaint to survive a motion to dismiss, the non-conclusory
26 factual content, and reasonable inferences from that content, must

27 ¹ Plaintiff has voluntarily dismissed her claim as to on-
28 street parallel parking, although the City allegedly provides no
handicap-accessible parallel parking either. (Compl. ¶ 5.)

1 be plausibly suggestive of a claim entitling the plaintiff to
2 relief." (internal quotation marks omitted)).

3 **III. DISCUSSION**

4 Title II of the ADA provides that "no qualified individual
5 with a disability shall, by reason of such disability, be excluded
6 from participation in or be denied the benefits of the services,
7 programs, or activities of a public entity, or be subjected to
8 discrimination by any such entity." 42 U.S.C. § 12132; see also
9 Lee v. City of L.A., 250 F.3d 668, 691 (9th Cir. 2001) ("Quite
10 simply, the ADA's broad language brings within its scope anything a
11 public entity does." (internal quotation marks omitted)). A
12 public entity is therefore required to "operate each service,
13 program, or activity so that the service, program, or activity,
14 when viewed in its entirety, is readily accessible to and usable by
15 individuals with disabilities." 28 C.F.R. § 35.150(a).²

16 Implementing regulations also detail requirements for
17 particular public services, programs, and activities, providing
18 specificity to the ADA's general mandate. See, e.g., 28 C.F.R. §§
19 35.150(d)(2), 35.151(i) (requiring curb ramps or other sloped areas
20 for pedestrian access to sidewalks at intersections). Relevant
21 here, for instance, the Architectural and Transportation Barriers
22 Compliance Board recently proposed guidelines requiring set amounts
23 of on-street parking to be handicap-accessible. See Accessibility
24 Guidelines for Pedestrian Facilities in the Public Right-of-Way, 76

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27 ² It is unnecessary to address the California Disabled
28 Persons Act separately, since a "violation of the right of an
individual under the [ADA] also constitutes a violation" of the
DPA. Cal. Civ. Code § 54(c).

1 Fed. Reg. 44664, 44677 (proposed July 6, 2011) (to be codified at
2 36 C.F.R. pt. 1190, app.).

3 The City recognizes the ADA's breadth of coverage, but argues
4 that Plaintiff's claim is precluded because no current regulation
5 expressly addresses on-street parking. The court disagrees.
6 Congress implemented the ADA to provide "a clear and comprehensive
7 national mandate for the elimination of discrimination against
8 individuals with disabilities." 42 U.S.C. § 12101(b)(1); see also
9 Hason v. Med. Bd. of Cal., 279 F.3d 1167, 1172 (9th Cir. 2002)
10 (holding that courts must construe the ADA broadly to effectively
11 implement this mandate). It is a violation of the statute itself
12 to deny a public service to individuals with disabilities. See 42
13 U.S.C. § 12132. This means that all public services must be
14 readily accessible to such individuals, see 28 C.F.R. § 35.150(a),
15 whether or not a federal agency has created specific guidelines for
16 a particular service. In other words, detailed regulations can
17 help public entities and courts determine compliance, but where
18 none are on point, we fall back to the general statutory
19 requirement, not out of its coverage. Nor do the proposed
20 regulations change the analysis. As Plaintiff properly explains,
21 "merely because a proposed new set of regulations will explicitly
22 discuss the accessibility standards for a particular thing, does
23 not mean that there were no obligations before." (Pl.'s Opp'n to
24 Mot. at 10.)

25 The case law also supports this analysis. Both parties
26 address the Ninth Circuit's decision in Barden v. City of
27 Sacramento, 292 F.3d 1073 (9th Cir. 2002). Barden held that
28 maintenance of public sidewalks is subject to Title II, even though

1 no regulation "specifically address[ed] the accessibility of
2 sidewalks." Id. at 1077. In so holding, the court explained that
3 the express regulatory requirement for curb ramps "would be
4 meaningless if the sidewalks between the curb ramps were
5 inaccessible." Id. To some degree, the same might be said here:
6 the curb ramp requirement would be less meaningful if on-street
7 parking next to the ramps were not accessible. But the more
8 important point, and end result in Barden, is that public entities
9 must provide the reasonable access required by the ADA even in the
10 absence of a specific regulation. See also Ass'n for Disabled Ams.
11 v. Concorde Gaming Corp., 158 F. Supp. 2d 1353, 1369 (S.D. Fla.
12 2001) ("[T]he lack of regulations for commercial, passenger vessels
13 renders compliance with and application of Title III an arduous
14 task. In light of the ADA's mandate for the elimination of
15 discrimination against persons with disabilities, it is a task,
16 though, that can no longer be delayed." (internal citations and
17 quotation marks omitted)).³

18 Finally, the point is made clear by imagining the scenario -
19 entirely possible here, at the motion to dismiss stage - where a
20 city courthouse is surrounded entirely by on-street parking, with
21 no other parking structure or vehicle access. Clearly, individuals
22 with physical disabilities would lack reasonable access to a
23 critical public service. See Botosan v. Paul McNally Realty, 216

24 ³ On a side note, a district court has concluded in a well-
25 reasoned decision that one ADA regulation, 28 C.F.R. pt. 36, app. A
26 § 4.1.2(5)(a), may in fact apply to on-street parking under certain
27 circumstances. See Lang v. Crocker Park LLC, No. 09-CV-1412, 2010
28 WL 3326867 (N.D. Ohio Aug. 20, 2010) ("[T]here is no express
requirement to provide on-street parking in the [regulations].
However, if the Defendants are going to provide on-street parking
to the non-disabled, they may be required to provide disabled
parking as well.").

1 F.3d 827, 835 (9th Cir. 2000) (noting that another car may park
2 right next to a non-disabled parking space, making it impossible to
3 reenter the vehicle from a wheelchair). Until the facts are
4 further developed in this case, the court cannot rule out this or
5 other equally discriminatory possibilities.

6 **IV. CONCLUSION**

7 In sum, the broad language of the ADA requires public entities
8 to ensure that all services, including on-street parking, are
9 reasonably accessible to and usable by individuals with
10 disabilities. Plaintiff's Complaint alleges sufficient facts - in
11 particular, the absence of any handicap-accessible on-street
12 parking - to plausibly make out a claim for relief. The court
13 therefore DENIES Defendant's Motion to Dismiss.

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15 IT IS SO ORDERED.

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18 Dated: October 28, 2011


DEAN D. PREGERSON
United States District Judge

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