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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ROY RIOS,
Plaintiff,
v.
CWGS ENTERPRISES, LLC, a
Delaware limited liability
company; and DOES 1-10
inclusive,
Defendant.

CV 17-03614 RSWL-AFMx
**ORDER Re: PLAINTIFF'S
MOTION TO REMAND [10];
DEFENDANT'S MOTION TO
CHANGE VENUE [13]**

I. INTRODUCTION

Plaintiff Roy Rios ("Plaintiff") filed this Action in the Superior Court of California for the County of Los Angeles on April 10, 2017. Compl., ECF No. 1-1. Plaintiff alleged that Defendant CWGS Enterprises, LLC's ("Defendant") website, www.campingworld.com, violates California's Unruh Civil Rights Act because it imposes barriers to access for blind and other visually-impaired individuals. *Id.* at ¶ 1. Currently before the Court is Plaintiff's Motion to Remand

1 ("Motion" or "Motion to Remand") this Action back to
2 Los Angeles Superior Court, and Defendant's Motion to
3 Change Venue to the Northern District of California
4 ("Motion to Change Venue"). See Pl.'s Mot. to Remand
5 ("Mot."), ECF No. 10; Def.'s Mot. to Change Venue
6 ("Mot. to Change Venue"), ECF No. 13. The Court,
7 having reviewed all papers and arguments submitted
8 pertaining to both Plaintiff's Motion to Remand and
9 Defendant's Motion to Change Venue, **NOW FINDS AND RULES**
10 **AS FOLLOWS:** the Court **GRANTS** Plaintiff's Motion to
11 Remand and **DENIES as MOOT** Defendant's Motion to Change
12 Venue.

13 **II. BACKGROUND**

14 **A. Factual Background**

15 Plaintiff is permanently blind and uses a screen
16 reader to access the internet and read website content.
17 Compl. ¶ 4. Blind individuals can only access websites
18 by using keyboards with screen-reading software that
19 vocalizes the information. Id. at ¶ 9. However,
20 unless a website is designed to be read by screen-
21 reading software, visually-impaired individuals cannot
22 access its information. Id.

23 Defendant owns and operates retail store locations
24 around the world, including in California. Id. at ¶ 5.
25 These locations are public accommodations within the
26 definition of Title III of the 1990 Americans with
27 Disabilities Act ("ADA") and are business
28 establishments within the definition of California

1 Civil Code §§ 51 *et seq.* Id. Defendant's website,
2 www.campingworld.com, provides access to an array of
3 services such as store locators and product
4 descriptions. Id.

5 Plaintiff alleges that Defendant has denied him and
6 other blind and visually-impaired individuals access to
7 the services and information made available through
8 www.campingworld.com. Id. at ¶ 12. Plaintiff alleges
9 Defendant's website lacks alternative text, an
10 invisible code embedded beneath a graphic image. Id.
11 at ¶ 14. Without this code, screen readers cannot
12 accurately vocalize a description of the graphic. Id.
13 Additionally, Defendant's website is riddled with
14 redundant links that go to the same URL address, which
15 result in additional navigation and repetition for
16 keyboard and screen-reader users. Id. Finally,
17 Defendant's website includes missing form labels. Id.
18 If a form control does not have a proper text label,
19 the function of that form control may not be presented
20 to screen-reader users. Id.

21 Plaintiff filed a lawsuit against Defendant in
22 state court alleging a violation of the Unruh Civil
23 Rights Act, California Civil Code § 51. Id. at ¶¶ 17-
24 18. In his Complaint, Plaintiff seeks a preliminary
25 and permanent injunction requiring Defendant to take
26 the necessary steps to make its website readily
27 accessible to visually-impaired individuals and
28 statutory damages as set forth by California Civil Code

1 § 52(a). Id. at 6:11-18.

2 **B. Procedural Background**

3 On May 5, 2017, Plaintiff filed this Action in the
4 Superior Court of California for the County of Los
5 Angeles [1-1]. On May 12, 2017, Defendant removed the
6 case to this Court on the basis of federal question
7 jurisdiction. Def.'s Ntc. of Removal [1]. On June 12,
8 2017, Plaintiff filed the instant Motion to Remand
9 [10]. Defendant filed its Opposition on June 20, 2017
10 [11] and Plaintiff's Reply followed on June 27, 2017
11 [12]. On June 30, 2017, Defendant filed a Motion to
12 Change Venue to the Northern District of California
13 [13]. On July 18, 2017 Plaintiff filed his Opposition
14 to Defendant's Motion to Change Venue [20] and
15 Defendant's Reply followed on July 25, 2017 [21].

16 **III. DISCUSSION**

17 **A. Legal Standard**

18 Federal courts are of limited jurisdiction, and
19 therefore, a federal court can only adjudicate cases
20 that create a federal question because they "arise
21 under the Constitution, laws, or treaties of the United
22 States," or those in which the parties have diversity
23 of citizenship. 28 U.S.C. §§ 1331, 1332.

24 Federal question jurisdiction exists only where
25 federal law creates the cause of action asserted, where
26 under the artful pleading doctrine one or more state
27 law claims should be re-characterized as federal
28 claims, or where state law claims necessarily turn on

1 the construction of a substantial, disputed federal
2 question. Rains v. Criterion Sys., Inc., 80 F.3d 339,
3 343 (9th Cir. 1996)(citing Merrell Dow Pharms. v.
4 Thompson, 478 U.S. 804, 807-10 (1968)).

5 However, the "mere presence of a federal issue in a
6 state cause of action does not automatically confer
7 federal-question jurisdiction." Wander v. Kaus, 304
8 F.3d 856, 858 (9th Cir. 2002)(citing Merrell Dow, 478
9 U.S. at 808). The federal issue must be a "necessary
10 element" of one of the state law claims. Id. The
11 federal issue must also be "actually disputed and
12 substantial." Grable & Sons Metal Prods., Inc. v.
13 Darue Eng'g & Mfg, 545 U.S. 308, 314 (2005).

14 Generally, the plaintiff "decide[s] what law he
15 will rely upon . . . and, if he can maintain his claim
16 on both state and federal grounds, he may ignore the
17 federal question and assert only a state law claim and
18 defeat removal." Sullivan v. First Affiliated Sec.,
19 Inc., 813 F.2d 1368, 1373 (9th Cir. 1987)(internal
20 quotation marks and citations omitted). The "burden of
21 establishing jurisdiction falls on the party invoking
22 the removal statute . . . which is strictly construed
23 against removal." Id. at 1371 (citing Hunter v. United
24 Van Lines, 746 F.2d 635, 639 (9th Cir. 1984), cert.
25 denied, 474 U.S. 863 (1985)(citation omitted)). Courts
26 resolve all ambiguities in favor of remand to state
27 court. Hunter v. Philip Morris USA, 582 F.3d 1039,
28 1042 (9th Cir. 2009).

1 **B. Analysis**

2 There is a presumption against removal and
3 Defendant bears the burden of proving federal question
4 jurisdiction. There are three bases for federal
5 question jurisdiction: (1) where federal law creates
6 the cause of action, (2) where under the artful
7 pleading doctrine a plaintiff's state law claims should
8 be re-characterized as federal claims, or (3) where one
9 or more state law claims necessarily turn on the
10 construction of a disputed, substantial federal
11 question. Rains, 80 F.3d at 343.

12 1. Plaintiff's Request for Judicial Notice is

13 **DENIED**

14 Plaintiff requests the Court take judicial notice
15 of five Central District of California orders by Judges
16 Kronstadt, Hatter, Carney, and Fitzgerald pursuant to
17 Federal Rules of Evidence 201. Pl.'s Req. for Jud.
18 Ntc., ECF No. 10-1.¹ It is unnecessary to take judicial
19 notice of opinions from other courts because this Court
20 can consider other legal authorities without judicially
21 noticing the opinions. McVey v. McVey, 26 F. Supp. 3d

22
23 ¹ Plaintiff requests judicial notice be taken of orders from
24 the following cases: (1) Cheryl Thurston v. Toys R Us, Inc., No.
25 5:16-cv-02672-JAK-AGR (C.D. Cal. Feb. 23, 2017), ECF No. 14; (2)
26 Thurston v. Omni Hotels Mgmt. Corp., No. 5:16-cv-02596-TJH-KK
27 (C.D. Cal. May, 19, 2017), ECF No. 15; (3) James Patrick Brown v.
28 BPS Direct, LLC, et al., No. LACV 14-04622 JAK (JEMx)(C.D. Cal.
Oct. 6, 2014), ECF No. 30; (4) Penney v. Kohl's Dep't Stores,
Inc., et al., No. SACV 14-01100-CJC (DFMx)(C.D. Cal. Sept. 23,
2014), ECF No. 12; and (5) Edward Davis v. Orlando Wilshire
Invs., Ltd., No. 5:15-cv-01738-MFW-KK (C.D. Cal. Nov. 2, 2015),
ECF No. 17.

1 980, 984-85 (C.D. Cal. 2014). "Judicial notice of law
2 is outside the scope of Rule 201, and derives from
3 practical considerations and case law that do not rely
4 on Rule 201 or principles of evidence." Id. at 985
5 (internal quotation marks and citation omitted). While
6 the Court can consider these decisions as non-binding
7 precedent, the Court **DENIES** Plaintiff's request for
8 judicial notice of the decisions. BP West Coast Prods.
9 LLC v. May, 347 F. Supp. 2d 898, 901 (D. Nev. 2004).

10 2. Whether Federal Law Creates the Cause of Action

11 "The district courts shall have original
12 jurisdiction of all civil actions arising under the
13 Constitution, laws, or treaties of the United States."
14 28 U.S.C. § 1331. Defendant first argues that
15 Plaintiff directly alleges a claim under the ADA,
16 giving this Court federal question jurisdiction.
17 Def.'s Opp'n to Pl.'s Mot. to Remand ("Opp'n") 3:1-5.
18 Defendant argues that because Plaintiff's Complaint
19 alleges that Defendant's actions also violate
20 provisions of the ADA, Plaintiff explicitly invokes
21 federal question jurisdiction. Id. Plaintiff argues
22 that he did not allege a violation of the ADA in his
23 Complaint and just because he pointed to the fact that
24 a violation of California's Unruh Civil Rights Act also
25 constitutes a violation of the ADA, that does not
26 invoke federal question jurisdiction. Mot. 1:6-12,
27 5:5-6.

28 The Ninth Circuit has held that the "mere presence

1 of a federal issue in a state cause of action does not
2 automatically confer federal-question jurisdiction."
3 Wander, 304 F.3d at 858 (quoting Merrell Dow, 478 U.S.
4 at 813). While Defendant is correct that Plaintiff is
5 seeking both injunctive relief and damages, Defendant
6 is incorrect in stating that fact necessarily invokes
7 federal question jurisdiction. Opp'n 8:6-15; see Toys
8 R Us, Inc., No. 5:16-cv-02672-JAK-AGR (finding that the
9 plaintiff's request for injunctive relief and damages
10 did not necessitate a finding of federal question
11 jurisdiction because "[w]hen a claim can be supported
12 by alternative and independent theories—one of which is
13 a state law theory and one of which is a federal law
14 theory—federal question jurisdiction does not attach
15 because federal law is not a necessary element of the
16 claim")(internal quotation marks and citations
17 omitted).

18 Plaintiff alleges an ADA claim only so far as it
19 independently constitutes a violation of the California
20 Unruh Civil Rights Act. A reading of Plaintiff's
21 Complaint and California Civil Code § 51(f) makes this
22 clear.² This does not constitute an independent claim
23 for relief under the ADA. Plaintiff's "state law cause
24 of action claim does not 'arise under federal law' even
25 though it is premised on a violation of federal law."

26 _____

27 ² California Civil Code § 51(f) states: "[a] violation of
28 the right of any individual under the federal Americans with
Disabilities Act of 1990 (Public Law 101-336) shall also
constitute a violation of this section."

1 Wander, 304 F.3d at 859. Therefore, Defendant's
2 manipulation of the language of Plaintiff's Complaint
3 is not sufficient to support federal question
4 jurisdiction.

5 While not binding precedent, the ruling in Thurston
6 v. Container Store, Inc., No. 5:16-cv-02658-SVW-DTB,
7 2017 WL 658806 (C.D. Cal. Feb. 16, 2017) mirrors the
8 facts and allegations in this case and this Court finds
9 it persuasive. In Container Store, the plaintiff
10 brought a similar claim regarding website accessibility
11 for visually-impaired individuals, alleged a violation
12 of the Unruh Civil Rights Act, and requested both
13 damages and injunctive relief. Id. at *1-2. The court
14 remanded the action back to state court after
15 concluding that the question of whether there was
16 federal question jurisdiction was ambiguous and all
17 ambiguities should be resolved in favor of remand. Id.
18 at *3.

19 The court similarly remanded an action regarding
20 website accessibility where a plaintiff alleged a
21 violation of the Unruh Civil Rights Act and requested
22 both injunctive relief and damages. Toys R Us, Inc.,
23 5:16-cv-02672-JAK-AGR (holding the plaintiff's claim
24 was not solely based on alleged violations of the ADA
25 because the relief sought is available under California
26 Civil Code § 51(b)). It is clear that Plaintiff did
27 not directly allege a federal cause of action and
28 federal law does not create the cause of action in the

1 instant case. Therefore, federal question jurisdiction
2 is not appropriate on this basis.

3 3. Whether the Artful Pleading Doctrine Applies

4 Under the artful pleading doctrine, federal
5 question jurisdiction is also proper when a plaintiff's
6 state law claims should be re-characterized as federal
7 claims. Rains, 80 F.3d at 344. A plaintiff "may not
8 defeat removal by omitting to plead necessary federal
9 questions in a complaint." JustMed, Inc. v. Bryce, 600
10 F.3d 1118, 1125 (9th Cir. 2010)(internal quotation
11 marks and citations omitted). Courts most frequently
12 deal with artful pleading where state law claims are
13 preempted, or even precluded by federal law, or
14 alternatively, where federal issues are embedded in
15 state law claims. Removal Based on Federal Question
16 Jurisdiction-Removal Based on Artful Pleading, 14B Fed.
17 Prac. & Proc. Juris. § 3722.1 (4th ed.).

18 Here, Defendant does not assert preemption of
19 federal law. This is because it is established that
20 the ADA's anti-discrimination provision does not
21 preempt California state claims. See City of Los
22 Angeles v. AECOM Servs., Inc., 854 F.3d 1149, 1156 (9th
23 Cir. 2017)("[t]he ADA expressly disavows preemptive
24 federal occupation of the disability-rights field").

25 Instead, Defendant argues the Court has
26 jurisdiction under the artful pleading doctrine because
27 Plaintiff has engaged in forum shopping by alleging a
28 violation of the ADA but only naming the Unruh Civil

1 Rights Act as a cause of action. Opp'n 6:1-8.
2 Defendant alleges Plaintiff is forum shopping to avoid
3 this District's ruling in Robles v. Dominos Pizza LLC,
4 No. CV-1606599-SJO-SPX, 2017 WL 1330216 (C.D. Cal. Mar.
5 20, 2017). Id. at 6:10-12. Defendant also points to
6 Plaintiff's decision not to remand nearly identical
7 actions as evidence that Plaintiff is engaging in forum
8 shopping and declining to remand cases where he prefers
9 the assigned federal judge over the state judge. Id.
10 at 6:20-7:5. These frivolous allegations are
11 inappropriate in the instant Motion and do nothing to
12 convince the Court or bolster Defendant's contention
13 that there is a basis to find federal question
14 jurisdiction.

15 While Defendant raises the artful pleading
16 doctrine, Defendant fails to provide any evidence or
17 factual support to bolster this contention. "Courts
18 should invoke the doctrine only in limited
19 circumstances as it raises difficult issues of state
20 and federal relationships and often yields
21 unsatisfactory results." Lippitt v. Raymond James Fin.
22 Servs., Inc., 340 F.3d 1033, 1041 (9th Cir. 2003)
23 (internal quotation marks and citations omitted). The
24 artful pleading doctrine has been used in: (1) complete
25 preemption cases and (2) substantial federal questions
26 cases. Id. Within this second category are cases
27 "where the claim is necessarily federal in character .
28 . . or where the right to relief depends on the

1 resolution of a substantial, disputed federal
2 question." Id. at 1042 (internal citations omitted).

3 As stated above, the ADA does not preempt state law
4 claims regarding discrimination based on a disability.
5 Accordingly, Defendant must prove that Plaintiff's
6 federal question is necessary, disputed, and
7 substantial to confer federal question jurisdiction.
8 As this is a separate basis to confer federal question
9 jurisdiction, the Court answers this question below.

10 4. Whether One or More State Law Claims
11 Necessarily Turn on a Disputed, Substantial
12 Federal Question

13 Federal question jurisdiction may also be invoked
14 where one or more state law claims necessarily turn on
15 the construction of a disputed, substantial federal
16 question. Rains, 80 F.3d at 343.

17 a. *Disputed and Substantial Federal Question*

18 Federal question jurisdiction may be proper where a
19 "state-law claim necessarily state[s] a federal issue,
20 actually disputed and substantial, which a federal
21 forum may entertain without disturbing a
22 congressionally approved balance of federal and state
23 judicial responsibilities." Grable & Sons, 545 U.S. at
24 315.

25 Defendant claims that website accessibility is a
26 disputed area of federal law under the ADA and thus any
27 claims arising under website accessibility need to be
28 adjudicated in federal court. Opp'n 3:18-27.

1 Defendant also notes that the Department of Justice
2 ("DOJ"), the federal agency responsible for
3 promulgating regulations under the ADA, has issued
4 opinions requiring certain institutions make their
5 websites compliant, but it has stopped short of
6 promulgating formal regulations. Id. at 4:1-3.
7 Defendant asserts that jurisdiction exists because this
8 federal question is both disputed and substantial and
9 the recent ruling in Dominos Pizza makes clear that the
10 issue of website accessibility is an unresolved issue
11 of federal law. Id. at 5:3-23. Plaintiff argues that
12 the fact that the DOJ or any other federal entity has
13 not laid out specific guidelines regarding website
14 accessibility does not transform all claims under the
15 Unruh Civil Rights Act regarding websites into federal
16 cases. Mot. 10:14-18.

17 Because the DOJ has yet to issue formal
18 regulations, federal courts have interpreted the ADA in
19 different ways regarding website accessibility.
20 Defendant suggests that the ruling in Dominos Pizza
21 mandates this Court's analysis. It does not. In
22 Dominos Pizza, the plaintiff brought two causes of
23 action under the ADA and two causes of action under
24 California state law claims regarding website
25 accessibility, whereas here, Plaintiff did not allege a
26 federal cause of action. 2017 WL 1330216, at *1. The
27 court there granted the defendant's motion to dismiss
28 pursuant to the primary jurisdiction doctrine after

1 finding that the lack of formal guidance by the DOJ in
2 regards to website accessibility made it difficult to
3 determine what criteria websites and mobile
4 applications must meet. Id. at *7. Dominos Pizza is
5 easily distinguishable from the case at bar. There,
6 the plaintiff filed the case in federal court, directly
7 alleging claims under the ADA. 2017 WL 1330216 at *3.
8 This is vastly different from this case, where
9 Plaintiff filed in state court and only alleged a state
10 cause of action under the Unruh Civil Rights Act.
11 Although certain points of the court's legal analysis
12 in the Dominos Pizza opinion may be helpful in the
13 determination of this case on the merits, the ruling is
14 not factually similar for the purposes of establishing
15 federal question jurisdiction.

16 Moreover, Dominos Pizza was distinguished by
17 Gorecki v. Hobby Lobby Stores, Inc., CV 17-1131-JFW
18 (SKx), 2017 WL 2957736, at *7 (C.D. Cal. June 15,
19 2017), where the court denied the defendant's motion to
20 dismiss finding the plaintiff was not seeking a "remedy
21 that adopts a specific rule. Instead, he requests an
22 order requiring [the defendant] to comply with the
23 DOJ's directive to ensure disabled individuals have as
24 full and equal enjoyment of its website as non-disabled
25 individuals." The court also found that the DOJ has
26 "repeatedly affirmed that Title III applies to websites
27 that meet the definition of a public accommodation,"
28 thereby calling into question the Dominos Pizza finding

1 that this is an unsettled area of federal law. Id. at
2 *4. Defendant relies too heavily on a case that is
3 both factually and legally distinguishable. Moreover,
4 based on the ruling in Gorecki, Defendant has failed to
5 show that website accessibility is a disputed and
6 substantial federal question.

7 b. *Necessity*

8 While the Court finds that Defendant has failed to
9 show there is a disputed and substantial federal
10 question, the Court nevertheless briefly analyzes the
11 necessity requirement for federal question
12 jurisdiction. To invoke federal question jurisdiction,
13 the federal issue must be disputed and substantial, but
14 a plaintiff's claim must also "necessarily turn[] on
15 the construction" of a federal issue. Rains, 80 F.3d
16 at 343. A federal issue does not confer federal
17 jurisdiction where it is "*merely collateral*" to a state
18 claim. Jackson v. Yoshinoya America Inc., No. 12-08518
19 MMM (EX), 2013 WL 865596, at *3 (C.D. Cal. Mar. 7,
20 2013)(emphasis in original). Rather, the "question of
21 federal law [must be] a necessary element of one of the
22 well-pleaded state claims." Rains, 80 F.3d at 345.

23 "When a claim can be supported by alternative and
24 independent theories—one of which is a state law theory
25 and one of which is a federal law theory—federal
26 question jurisdiction does not attach because federal
27 law is not a necessary element of the claim." Id. at
28 346. Defendant does not argue or address the necessity

1 of the ADA claim under the Unruh Civil Rights Act. In
2 Container Store, which has factually similar claims and
3 legal theories as the present case, the court found
4 that the defendant's possible ADA violation "is only
5 one of two theories of liability presented by the
6 Plaintiff, meaning that the ADA may not be involved at
7 all in the litigation. This would suggest that
8 resolving the federal question is not a necessary
9 element of the Plaintiff's claim." 2017 WL 658806, at
10 *3. Similarly, Defendant has not shown that
11 Plaintiff's cause of action necessarily requires
12 answering a federal question, or that Plaintiff's
13 claims for relief are solely based on the ADA to
14 satisfy the necessity requirement. Toys R Us, Inc.,
15 5:16-cv-02672-JAK-AGR, at 4. Plaintiff has alleged
16 that Defendant's conduct constitutes a violation of the
17 ADA as well as California's Unruh Civil Rights Act.
18 However, on its own, that is not sufficient for this
19 Court to conclude that determining whether there is a
20 violation of the ADA is a necessary question to support
21 a finding that there is federal question jurisdiction.

22 Finally, Defendant argues this Court has subject
23 matter jurisdiction based on a separate case involving
24 Defendant in the Northern District of California, Son
25 Kim v. CWI, Inc., et al., No. 4:16-cv-01913-JSW (N.D.
26 Cal. Dec. 12, 2016). The parties entered into a
27 settlement agreement and the court there retained
28 jurisdiction over the parties to enforce the settlement

1 agreement. As an initial matter, the Son Kim case does
2 not involve Plaintiff and was not a class-action
3 settlement or a case that is binding on Plaintiff or
4 other individuals not parties to the suit. While the
5 court there retained jurisdiction over the parties, it
6 was only as to those parties and as to that lawsuit.
7 Defendant appears to assert that federal question
8 jurisdiction is appropriate in this case because the
9 court in Son Kim has federal question jurisdiction.
10 However, in Son Kim the plaintiff directly alleged a
11 violation of the ADA. This is distinguishable from
12 this case, and Son Kim has no bearing on this Court's
13 duty to independently determine whether it has subject
14 matter jurisdiction, which the Court finds it does not.

15 **IV. CONCLUSION**

16 For the reasons set forth above, and because the
17 Court must resolve all ambiguities in favor of remand,
18 the Court **GRANTS** Plaintiff's Motion to Remand and
19 Remands this Action back to the Superior Court of
20 California for the County of Los Angeles, Central
21 District, Case No. **BC657201**. The Court **DENIES as MOOT**
22 Defendant's Motion to Change Venue.

23 **IT IS SO ORDERED.**

24 DATED: August 11, 2017

s/ RONALD S.W. LEW

HONORABLE RONALD S.W. LEW

Senior U.S. District Judge