

1 **II. BACKGROUND**

2 Plaintiff is blind and uses screen-reading software to access the Internet and
3 read websites. (Compl. ¶ 1, ECF No. 15-1.) After attempting to visit Defendant’s
4 website and being unable to do so because of barriers to screen-reading access,
5 Plaintiff filed this case alleging a violation of the Unruh Civil Rights Act (California
6 Civil Code ¶ 51 et seq.). (Compl. ¶¶ 12, 13, 16.) Defendant based its removal of the
7 case to federal court on two grounds: federal question jurisdiction and diversity
8 jurisdiction. Plaintiff argues in his motion to remand that neither basis is proper,
9 because there is no federal question at stake (as the Unruh Act is a California statute),
10 and the amount in controversy does not exceed \$75,000, precluding diversity
11 jurisdiction. (*See generally* Mot.)

12 **III. LEGAL STANDARD**

13 Federal courts have subject matter jurisdiction only as authorized by the
14 Constitution and by Congress. U.S. Const. art. III, § 2, cl. 1; *Kokkonen v. Guardian*
15 *Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Federal courts have original
16 jurisdiction where an action arises under federal law, or where each plaintiff’s
17 citizenship is diverse from each defendant’s citizenship and the amount in controversy
18 exceeds \$75,000. 28 U.S.C. §§ 1331, 1332(a). A defendant may remove a case from
19 state court to federal court only if the federal court would have had original
20 jurisdiction over the suit. 28 U.S.C. § 1441(a). Courts should construe the removal
21 statute strictly against removal, and “[f]ederal jurisdiction must be rejected if there is
22 any doubt as to the right of removal in the first instance.” *Gaus v. Miles, Inc.*, 980
23 F.2d 564, 566 (9th Cir. 1992). The party seeking removal bears the burden of
24 establishing federal jurisdiction. *Durham v. Lockheed Martin Corp.*, 445 F.3d 1247,
25 1252 (9th Cir. 2006).

26 **IV. DISCUSSION**

27 Plaintiff attacks both of Defendant’s bases for removal, arguing that there is not
28 a federal question at stake and that there is not an amount in controversy exceeding

1 \$75,000. The Court agrees that there is not a federal question at stake but finds that
2 the amount in controversy exceeds \$75,000, and therefore, the requirements for
3 diversity jurisdiction are met.

4 **A. Federal Question Jurisdiction**

5 Plaintiff argues that his partial reliance on the federal Americans with
6 Disabilities Act (“ADA”) in stating his claim under the Unruh Act does not create a
7 federal question. *See* 42 U.S.C. § 12188. The Court agrees.

8 California’s Unruh Act incorporates the ADA, such that the ADA may serve as
9 the “hook” for an alleged violation of state law. *See, e.g., Lentini v. Cal. Ctr. for the*
10 *Arts, Escondido*, 370 F.3d 837, 846 (9th Cir. 2004). This is what Plaintiff has done,
11 partially basing his Unruh Act claim on a violation of the ADA. (*See* Compl. ¶¶ 5, 21
12 (“The New York & Co. store locations in California are public accommodations
13 within the definition of Title III of the Americans with Disabilities Act” and
14 “Defendant is also violating the Unruh Civil Rights Act . . . in that that conduct
15 alleged herein likewise constitutes a violation of various provisions of the ADA . . .
16 .”). Plaintiff does not allege an ADA violation as an independent cause of action or
17 seek relief under the ADA. Further, Plaintiff lists other “hooks” for his Unruh Act
18 claim independent of the ADA. (*See id.* ¶¶ 18–20.)

19 Plaintiff cites to *Wander v. Kaus*, 304 F.3d 856 (9th Cir. 2002), which is
20 instructive as to one portion of Plaintiff’s claim. Plaintiff argues that because the
21 *Wander* court ruled that a state-law damages suit premised on a violation of the ADA
22 does not give rise to a federal cause of action for damages, his case likewise does not
23 give rise to a federal cause of action. *See id.* at 859. While this reasoning applies to
24 Plaintiff’s prayer for damages, Plaintiff also seeks injunctive relief, which is outside
25 the scope of the holding in *Wander*. The court in *Pickern v. Best Western Timber*
26 *Cove Lodge Mariana Resort* addressed a similar issue, finding that:

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28 State law provides for injunctive relief as well as damages, *see* Cal.
Civ. Code 52.1(b), and it is possible for a state law claim for

1 injunctive relief to be premised solely on a violation of the ADA.
2 Such a claim would be no different from a federal ADA claim.
3 Federal question jurisdiction must exist in these circumstances.

4 194 F. Supp. 2d 1128, 1132 n.5 (E.D. Cal. 2002). Unlike the situation referenced in
5 *Pickern*, however, Plaintiff's Unruh Act claim for injunctive relief is not based *solely*
6 on a violation of the ADA; he also alleges that Defendant's conduct violates the
7 Unruh Act based on that act's own provisions. (*See, e.g.*, Compl. ¶ 20.) Therefore,
8 the Court finds that Plaintiff's Unruh Act claim does not necessarily require resolving
9 Defendant's liability under the ADA and does not create a federal question. *See*
10 *Wander*, 304 F.3d at 859; *Pickern*, 194 F. Supp. 2d at 1132.

11 **B. Diversity Jurisdiction—Amount in Controversy**

12 The parties do not contest that complete diversity exists in this action.
13 (Compare Mot., with Opp'n.) However, Plaintiff argues that the amount in
14 controversy is below \$75,000, while Defendants claim that it is actually much higher.
15 The Court agrees that the amount in controversy exceeds \$75,000.

16 In general, "the sum demanded in good faith in the initial pleading shall be
17 deemed to be the amount in controversy." 28 U.S.C. § 1442(c)(2). When a plaintiff
18 seeks injunctive as well as monetary relief, the value of the injunction for purposes of
19 the amount in controversy can be assessed from "either viewpoint"—the plaintiff's
20 benefit or the defendant's cost. *Ridder Bros. Inc. v. Blethen*, 142 F.2d 395, 399 (9th
21 Cir. 1944).

22 Plaintiff argues that he is the "master of his own complaint" and has specifically
23 limited the recovery he can receive to below \$75,000. (Reply 6, ECF No. 13; Mot. 3.)
24 Nonetheless, the Court determines that the amount in controversy is actually higher.
25 The wording of Plaintiff's complaint plainly allows his combined monetary and
26 injunctive recovery to be valued above \$75,000. He states, "Plaintiff is entitled to
27 injunctive relief . . . However, Plaintiff expressly limits the injunctive relief he seeks
28 to \$50,000 or less," and, "Plaintiff is also entitled to statutory minimum damages . . .

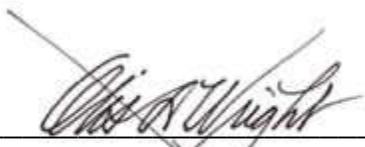
1 [and] reasonable attorneys’ fees and costs; however, Plaintiff expressly limits the
2 amount of *money* that Plaintiff presently seeks to recover in this action to less than
3 \$75,000.” (Compl. ¶¶ 22–24 (emphasis added)). Plaintiff then states in his
4 Complaint, “that the maximum amount of any total recovery shall not exceed
5 \$74,999.” (*Id.* ¶ 24.) That conclusory limitation appears slapdash and contradicts
6 Plaintiff’s other statements in his prayer for relief. He asks for injunctive relief up to
7 \$50,000 and monetary relief up to \$75,000, and then he states that the total recovery
8 shall not exceed \$74,999. The Court will not allow Plaintiff to request injunctive and
9 monetary recovery far exceeding the jurisdictional minimum in once sentence and
10 artificially limit the total recovery in the next. As such, the Court determines that the
11 actual amount in controversy is at least \$125,000. Therefore, diversity jurisdiction
12 exists in this action, and it may remain in federal court.

13 **V. CONCLUSION**

14 For the foregoing reasons, the Court **DENIES** Plaintiff’s Motion to Remand.
15 (ECF No. 11.)

16
17 **IT IS SO ORDERED.**

18
19 August 17, 2017

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23 **OTIS D. WRIGHT, II**
24 **UNITED STATES DISTRICT JUDGE**