

1 related to future injury.” (*Id.* at 17.) Furthermore, Defendant argues that “Plaintiff’s claims and
2 allegations related to his alleged original February 24, 2022, visit to the El Centro Store should be
3 dismissed..., because Plaintiff does not allege that he used a wheelchair during his visit.” (*Id.*) In the
4 alternative, Defendant moves for summary judgment. (*Id.* at 23-24.) Plaintiff opposes the request to
5 strike and dismiss and included a cross-motion for summary judgment in his opposition. (Doc. 40.)
6 The Court referred the matters to the assigned magistrate judge. (Doc. 43.)

7 The magistrate judge observed that the Court granted Defendant’s motion for judgment on the
8 pleadings and dismissed Plaintiff’s FAC with leave to amend. (Doc. 45 at 4, 8.) The magistrate judge
9 noted the Court granted Plaintiff the “opportunity to file an amended complaint that cures the
10 deficiencies related to standing identified in [the court’s] order.” (*Id.* at 8, quoting Doc. 36 at 19.) In
11 addition, the Court “dismissed Plaintiff’s claim for a violation of California’s Unruh Act without leave
12 to amend, but without prejudice to refile before the state court.” (*Id.* at 8.) Further, the magistrate
13 judge noted the Court held: “leave to amend is limited to **only** the claim arising under the ADA.” (*Id.*,
14 emphasis in original.) Based upon the explicit limitation to the leave to amend, the magistrate judge
15 “agree[d] with Defendant that the newly added visits to the Bakersfield store and El Centro store, the
16 renewed Unruh Act claim, and the new claim under the California Disabled Persons Act exceed the
17 scope of the limited leave to amend the district court granted in its prior order on Defendant’s motion
18 for judgment on the pleadings.” (*Id.* at 9.)

19 The magistrate judge found that “Plaintiff did not request leave to amend to add the new visits,
20 to reassert an Unruh Act claim, or to add a claim under the California Disabled Persons Act and is
21 barred from adding them without the court’s leave.” (Doc. 45 at 9, citing Fed. R. Civ. P. 15(a)(2).)
22 The magistrate judge found that leave to amend was “not be appropriate in the present circumstances”
23 because the deadline to amend the pleadings was May 12, 2022, and Plaintiff did not demonstrate good
24 cause for amendment after the deadline. (*Id.*, citing Doc. 12.) The magistrate judge explained:

25 There is no indication of diligence to support amendment, whether for the
26 store “revisits” in 2022, the reassertion of the Unruh Act claim, or the
27 addition of the California Disabled Persons Act claim. Plaintiff provides
28 no explanation as to why the theories underlying his Unruh Act claim or
his assertion of a claim under the California Disabled Persons Act could
not have been made prior to expiration of the amendment deadline.
Further, Plaintiff seemingly chose to “revisit” the Bakersfield and El
Centro stores only after expiration of the non-expert discovery deadline on

1 July 28, 2022. (Doc. 12.) Plaintiff made no attempt to amend the
2 scheduling order or amend his complaint to add these claims until April
3 10, 2023, after the district court granted Defendant’s motion for judgment
4 on the pleadings.

5 (Doc. 45 at 10.) Thus, the magistrate judge found Plaintiff failed to satisfy the good cause requirement
6 under Rule 16 of the Federal Rules of Civil Procedure. (*Id.*) Even if Plaintiff satisfied the good cause
7 requirement, the magistrate judge determined “the relevant factors weigh against leave to amend under
8 Rule 15.” (*Id.* at 10; *see also id.* at 11-14.) Therefore, the magistrate judge recommended the “motion
9 to strike be granted and Plaintiff’s (1) two new alleged store visits (*see, e.g.*, Doc. 37 at 8, ¶¶ 26, 28; 10-
10 13, ¶¶ 35-41; 15-17, ¶¶ 50-56), (2) the Unruh Act claim, and (3) the California Disabled Persons Act
11 claim be stricken from the SAC under Rule 12(f).” (*Id.* at 14-15, emphasis omitted.)

12 The magistrate judge then turned to the motion to dismiss, to determine whether Plaintiff cured
13 the pleading deficiencies related to standing. (Doc. 45 at 16-20.) The magistrate judge noted that
14 although Plaintiff alleged that he shopped at the El Centro store on February 24, 2022, he also alleged
15 that he “requested his son to go into the store to determine whether it was accessible for Plaintiff in his
16 wheelchair.” (*Id.* at 16-17, citing Doc. 27 at 13, ¶¶ 42, 44.) The magistrate judge found, “While
17 Plaintiff attempts to imply that he shopped in the store and used his wheelchair, the SAC does not
18 specifically allege that Plaintiff used his wheelchair on that date or that he entered the store and
19 encountered barriers. Rather, Plaintiff’s allegations indicate that he requested his son go into the store
20 and relate to information relayed to Plaintiff by his son.” (*Id.* at 17.) The magistrate judge determined
21 these allegations were “insufficient to demonstrate an injury-in-fact,” and recommended that
22 “Defendant’s motion to dismiss Plaintiff’s allegations and claims related to his February 23, 2022 visit
23 the El Centro store be granted, and those allegations and claims be dismissed without leave to amend.”
(*Id.*, emphasis omitted.)

24 Defendant also challenged Plaintiff’s standing on the grounds that Plaintiff did not allege “a real
25 and immediate threat of repeated injury.” (Doc. 45 at 17, citing Doc. 38-1 at 17.) The magistrate judge
26 found the SAC did not include any “indication of how regularly Plaintiff visits the Bakersfield area (or
27 El Centro area) from Arizona or that he would return to the area on any particular future date.” (*Id.* at
28 19.) Thus, the magistrate judge determined the “SAC does not sufficiently allege an intent to return.”

1 (*Id.*, *see also id.* at 18-19, citing, *e.g.*, *Gastelum v. Burlington Stores, Inc.*, 2024 WL 389229, at *3
2 (S.D. Cal. Feb. 1, 2024), *Strojnik v. Four Sisters Inns, Inc.*, 2019 WL 6700939, at *4 (C.D. Cal. Dec. 9,
3 2019).) In addition, the magistrate judge found, “Because Plaintiff offers no more than a conclusory
4 statement that he will return to the Bakersfield store (or El Centro area) once it is represented to him
5 that the store is accessible, he fails to allege facts sufficient to support a conclusion that he has standing
6 due to deterrence.” (*Id.* at 20, citing *Feezor v. Sears, Roebuck & Co.*, 608 F. App’x 476, 477 (9th Cir.
7 2015); *Strojnik v. Bakersfield Convention Hotel I, LLC*, 436 F. Supp. 3d 1332, 1341 (E.D. Cal. 2020).)
8 The magistrate judge concluded that Plaintiff failed to cure the pleading deficiencies previously
9 identified by the Court and recommended that “Defendant’s motion to dismiss the remaining
10 allegations and claims in the SAC be granted based on lack of standing.” (*Id.*, emphasis omitted.)

11 Based upon recommendations that the ADA claim be dismissed for lack of standing and the
12 state law claims be stricken, the magistrate judge found it was unnecessary to reach the parties’
13 arguments regarding summary judgment. (Doc. 45 at 21.) The magistrate judge recommended the
14 parties’ cross-motions for summary judgment be denied as moot. (*Id.*)

15 The Court served the Findings and Recommendations on the parties and notified them that any
16 objections were due within 14 days. (Doc. 45 at 22.) The Court advised Plaintiff that the failure to
17 file objections within the specified time may result in the waiver of rights on appeal. (*Id.*, citing
18 *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014), *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th
19 Cir. 1991).) Neither party filed objections, and the time to do so has expired.

20 According to 28 U.S.C. § 636(b)(1)(C), this Court performed a *de novo* review of this case.
21 Having carefully reviewed the matter, the Court concludes the Findings and Recommendations are
22 supported by the record and proper analysis.¹ Thus, the Court **ORDERS**:

24 ¹ In the “Conclusion and Recommendation,” the magistrate judge recommended “Defendant’s motion to strike be granted.”
25 (Doc. 45 at 22, emphasis omitted.) The Court notes that Defendant moved to strike the entirety of the SAC, asserting that
26 Plaintiff’s inclusion of new allegations and causes of action exceeding the scope of permitted amendment “warrants this
27 Court striking Plaintiff’s amended pleading.” (Doc. 38-1 at 7.) However, Defendant also asserted that “all of Plaintiff’s
28 claims relating to (1) his two new alleged store visits, (2) the Unruh Act, and (3) and the California Disabled Persons Act
must be stricken under Rule 12(f).” (*Id.* at 14.) In the analysis, the magistrate judge explicitly indicated that she did “not
recommend striking the SAC in its entirety, only those allegations related to the second visits to the Bakersfield and El
Centro stores, the Unruh Act claim, and the California Disabled Persons Act claim.” (Doc. 45 at 16 [emphasis added]; *see*
also id. at 21.) Toward that end, the Court finds the magistrate judge properly tailored the analysis to the unpermitted
amendments and, in fact, recommended the motion to strike be granted *in part*.

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1. The Findings and Recommendations dated March 8, 2024 (Doc. 45) are **ADOPTED** in full.
2. Defendant’s motion to strike pursuant to Rule 12(f) is **GRANTED** in part.
3. Plaintiff’s allegations related to two additional store visits (Doc. 37 at 8, ¶¶ 26, 28; 10-13, ¶¶ 35-41; 15-17, ¶¶ 50-56) are **STRICKEN** from the SAC pursuant Rule 12(f).
4. Plaintiff’s claims under the Unruh Act and the California Disabled Persons Act are **STRICKEN** from the SAC pursuant Rule 12(f).
5. Defendant’s motion to dismiss Plaintiff’s allegations and claims related to his El Centro store visit on February 23, 2022, is **GRANTED**.
6. Defendant’s motion to dismiss the remaining claim in the SAC—arising under the Americans with Disabilities Act—is **GRANTED** pursuant to Rule 12(b)(6).
7. Further leave to amend is **DENIED**.
8. Defendant’s alternative motion for summary judgment is denied as **MOOT**.
9. Plaintiff’s cross-motion for summary judgment (Doc. 40) is denied as **MOOT**.
10. The Clerk of Court is directed to close this case.

IT IS SO ORDERED.

Dated: March 26, 2024


UNITED STATES DISTRICT JUDGE