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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PETER STROJNIK, SR.,
Plaintiff,
v.
WICKSTROM HOSPITALILTY, LLC,
Defendant.

No. 2:19-cv-002043 JAM AC PS

FINDINGS AND RECOMMENDATIONS

Plaintiff is proceeding in this action in pro se and has paid the filing fee. ECF No. 1. The action is referred to the undersigned for pretrial proceedings by E.D. Cal. R. (“Local Rule”) 302(c)(21). Defendant Wickstrom Hospitality, d/b/a Amber House Inn of Midtown (“Amber House” or “Hotel”) moved to dismiss plaintiff’s complaint in late 2019. ECF No. 5. The undersigned recommended that the motion be granted, and the complaint be dismissed with leave to amend. ECF No. 12. The findings and recommendations were adopted in full. ECF No. 18. Plaintiff timely filed a First Amended Complaint (“FAC”), ECF No. 19, and defendant again moved to dismiss, ECF No. 20. The motion was granted, but plaintiff was allowed to amend for a second time. ECF Nos. 23, 24. Plaintiff filed a Second Amended Complaint on September 10, 2020. ECF No. 25. Defendant now moves to dismiss the Second Amended Complaint (“SAC”). The matter was taken under submission and is fully briefed. ECF Nos. 27, 29, 30, 31. Because Defendant no longer owns the property at issue, rendering the ADA claim for injunctive relief

1 moot, this court lacks subject matter jurisdiction and the motion to dismiss should be GRANTED
2 without further leave to amend.

3 **I. Allegations of the Second Amended Complaint**

4 The following facts are drawn from the SAC and are accepted as true only for the
5 purposes of this Motion. Cousins v. Lockyer, 568 F.3d 1063, 1067 (9th Cir. 2009). Plaintiff
6 brings this action pursuant to the (1) Americans with Disabilities U.S.C. § 12101 et seq. and
7 corresponding regulations, 28 CFR Part 36 and Department of Justice Standards for Accessible
8 Design (“ADA”), (2) California Unruh Civil Rights Act, California Civil Code § 51, 52
9 (“Unruh”) (3) the California Disabled Persons Act (“DPA”) and (4) fraud and omissions, Cal Civ.
10 Code § 1710(3), and (5) the common law of negligence. ECF No. 25 at 2.¹

11 Plaintiff is and, at all times relevant has been, legally disabled by virtue of (a) prostate
12 cancer, (2) renal cancer, (3) severe right-sided neural foraminal stenosis with symptoms of
13 femoral neuropathy, (4) missing part of a limb (prosthetic right knee), physical impairment in
14 arms and shoulders and (6) pleurisy. Id. at 4. Plaintiff’s SAC contains a chart featuring each
15 alleged impairment and its relative limitations on major life activities, including walking,
16 standing, sitting, bending, sleeping, working, climbing stairs, kicking, running, climbing, knee
17 twisting, reaching, writing, twisting the wrist, opening doors, pushing, grasping, and “physically
18 functioning on any level,” amongst others. Id. at 5-6. Plaintiff’s impairments, in their
19 “unmitigated, active state” require the use of a wheelchair. Id. at 6. Plaintiff has been issued a
20 disability parking placard by the Arizona Department of Transportation. Id.

21 Defendant owned and operated the Hotel, located at 1315 22nd Street, Sacramento, CA
22 95816. Id. at 2. Plaintiff visited Amber House on or about June 11, 2019. Id. at 3. Plaintiff
23 identifies barriers encountered, including an inaccessible route with no signage to an accessible
24 route, lack of accessible parking, an inaccessible threshold step, an inaccessible entry with no

25 ¹ Other judges of this District have recognized that plaintiff Peter Strojnik has filed thousands of
26 disability discrimination cases against hotel defendants in state and federal courts; this is one of
27 those many cases. See Strojnik v. Bakersfield Convention Hotel I, LLC, No. 1:19-cv-01098-
28 LJO-JLT, 2020 WL 509156, at *1 (E.D. Cal. Jan. 31, 2020). However, plaintiff’s undeniable
status as a serial litigator is not, and cannot be, a factor in the decision on the viability of his
complaint. Antoninetti v. Chipotle Mexican Grill, Inc., 643 F.3d 1165, 1175 (9th Cir. 2010).

1 signage to an accessible route, improperly configured handrails, an inaccessible entry, and
2 additional lack of accessible parking. Id. at 13-19. Unlike in his previous complaints, plaintiff
3 describes in detail how each barrier relates personally to his disabilities, preventing him from full
4 use and enjoyment of the property. For example, plaintiff identifies an inaccessible route
5 including a step with no signage to an accessible route and no ramp, and explains that because he
6 is missing his right knee and suffers from severe right-sided neural foraminal stenosis, he cannot
7 navigate the route. Id. at 18. Plaintiff identifies inaccessible parking, stating it impacts him
8 directly because parking in the general spaces requires him to walk further and carry his luggage
9 a greater distance than if he was able to park at a close, designated space, causing him pain,
10 suffering and discomfort. Id. at 19. Plaintiff identifies improperly configured oversized
11 handrails, and states that because of impairments in his upper extremities, he cannot grip the
12 oversized handrails and would not be able to negotiate the stairs without proper handrails. Id. at
13 17.

14 Plaintiff is deterred from visiting Amber House based on his knowledge that it is not ADA
15 and Unruh compliant as such compliance relates to his disability. Id. at 2. Plaintiff intends to
16 visit Amber House “at a specific time when it becomes fully compliant with ADAAG.” Id. at 3.
17 Plaintiff alleges his current intent is to return sometime in September of 2020 to test the Hotel’s
18 compliance with the ADA. Id. Plaintiff seeks both damages and injunctive relief. 18-21.

19 **II. Motion to Dismiss**

20 Although defendant’s motion to dismiss largely mirrors its previous motions, there is one
21 glaring exception: defendant states that on July 13, 2020, Wickstrom Hospitality LLC sold all
22 rights, title, and interest in the Amber House Inn of Midtown, and neither Wickstrom Hospitality
23 nor any of its members have any interest in the property after July 13, 2020. Declaration of
24 Daniel Wickstrom (ECF No. 26-2) at 2. A copy of the Grant Deed is submitted as an exhibit,
25 confirming the transfer of the property. ECF No. 26-1 at 7-9. Plaintiff does not mention this fact
26 in his opposition. ECF No. 29.

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1 ADA is injunctive relief, and mootness of the injunctive relief remedy creates an absence of
2 federal question jurisdiction under the statute. Id. (plaintiff “conceded that his request for
3 injunctive relief had become moot when the [defendant] ceased to own the property.”).

4 The Ninth Circuit determined that when an ADA claim for injunctive relief was moot,
5 leaving only state law claims, there was no federal jurisdiction, even if one or more of the state
6 law claims incorporated an ADA violation as an element. Id. at 859. In coming to this
7 conclusion, the Ninth Circuit referenced a case from this Court, which held that “[t]he fact that an
8 ADA violation may serve as an element of a state law claim does not automatically confer federal
9 question jurisdiction. Unlike the California Disabled Persons Act and the Unruh Civil Rights
10 Act, both of which provide damages for violations, the only remedy available to a private plaintiff
11 under the ADA is injunctive relief.” Pickern v. Best W. Timber Cove Lodge Marina Resort, 194
12 F. Supp. 2d 1128, 1131 (E.D. Cal. 2002).

13 Defendant has submitted a declaration stating that “[o]n July 13, 2020, Wickstrom
14 Hospitality, LLC sold all rights, title and interest in and to the Amber House Inn of Midtown, and
15 neither Wickstrom Hospitality nor any of its members have any interest in the hotel after July 13,
16 2020. Wickstrom Hospitality *no longer owns the hotel, manages the hotel, operates the hotel or*
17 *leases the hotel.*” Wickstrom Decl. ¶ 3 (emphasis added). The court takes judicial notice of the
18 Grant Deed showing that the property was transferred to non-parties, which was recorded by
19 Sacramento County on July 13, 2020 (ECF No. 26-2 at 7-9), because this is a publicly available
20 government document. Fed. R. Civ. P. 201(1), (2); United States v. Ritchie, 342 F.3d at 909.
21 Because the Deed confirms the transfer of ownership beyond dispute, defendant has met its
22 burden of establishing that it no longer owns or operates the property at issue.

23 Here, because the defendant in this case no longer owns or operates the property at issue,
24 there is no injunctive remedy available and the ADA claim is moot and must be dismissed.
25 Because the ADA claim is moot and must be dismissed, there is no longer federal question
26 jurisdiction over this case.

27 C. Supplemental Jurisdiction over State Claims

28 A district court may decline to exercise supplemental jurisdiction if it dismisses all claims

1 over which it has original jurisdiction. Sanford v. MemberWorks, Inc., 625 F.3d 550, 561 (9th
2 Cir. 2010) (quoting 28 U.S.C. § 1367(c)(3)). Because the ADA claim is moot and must be
3 dismissed, the court need not entertain any of the other claims that plaintiff raises. This court
4 should decline to exercise supplemental jurisdiction over the Unruh Act and other state claims.

5 **V. Conclusion**

6 For the reasons explained above, this court lacks subject matter jurisdiction over this case.
7 Accordingly, the undersigned RECOMMENDS that defendant's motion to dismiss (ECF No. 26)
8 be GRANTED and that this case be DISMISSED for lack of subject matter jurisdiction, without
9 further leave to amend.

10 These findings and recommendations are submitted to the United States District Judge
11 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days
12 after being served with these findings and recommendations, any party may file written
13 objections with the court and serve a copy on all parties. Id.; see also Local Rule 304(b). Such a
14 document should be captioned "Objections to Magistrate Judge's Findings and
15 Recommendations." Failure to file objections within the specified time may waive the right to
16 appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez
17 v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

18 DATED: December 17, 2020

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20 ALLISON CLAIRE
21 UNITED STATES MAGISTRATE JUDGE
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