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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

PAUL REIN,  
Plaintiff,  
v.  
LEON AINER, et al.,  
Defendants.

Case No. [14-cv-01698-JD](#)

**ORDER GRANTING MOTION TO  
DISMISS AND DENYING MOTION  
FOR SANCTIONS**

Re: Dkt. Nos. 12, 13

This is an action brought by plaintiff Paul Rein, a disability rights lawyer, against defendants Pamela Keith and Leon Ainer. Pamela Keith is the daughter of Mr. Rein’s deceased wife, Brenda Keith Rein, from a prior marriage. Mr. Rein has sued Ms. Keith as an individual and in her capacities as trustee of the Brenda Keith Rein Living Trust and as executor of the Estate of Brenda Rein. Mr. Ainer is an attorney who is alleged to have acted on Ms. Keith’s behalf. Mr. Rein alleges four causes of action against Ms. Keith and Mr. Ainer, including one federal claim brought under the Americans with Disabilities Act.

Before the Court are (1) defendants’ motion to dismiss the federal ADA claim for failure to state a claim and to dismiss the pendant state claims for lack of jurisdiction, and (2) defendants’ motion for Rule 11 sanctions and injunctive relief. The Court grants the motion to dismiss and denies the motion for sanctions.

**BACKGROUND**

As alleged in the operative complaint, Paul Rein is a 69-year-old lawyer who has focused his practice on “public interest cases representing physically disabled persons in disability rights lawsuits.” Dkt. No. 6 ¶¶ 6, 11. These cases have included “access lawsuits to enforce the Americans with Disabilities Act of 1990.” *Id.* ¶ 11. Mr. Rein operates a law firm, the Law

1 Offices of Paul L. Rein, that has been located at 200 Lakeside Drive in Oakland since 1990. *Id.*  
2 After renting an office there for six years, Mr. Rein purchased it in 1996 “in joint tenancy with his  
3 late wife, the late Brenda Rein,” who died from cancer in May 2010. *Id.*

4 Pamela Keith is the late Mrs. Rein’s 45-year-old daughter from a prior marriage. *Id.* ¶ 7.  
5 Ms. Keith “has been a corporate attorney for approximately 15 years, working for large corporate  
6 law firms in Washington D.C., Indianapolis, Chicago and Florida.” *Id.* Mr. Rein alleges on  
7 information and belief that Ms. Keith’s law practice “has focused on representing large  
8 corporations and defending these corporations against civil rights discrimination actions, including  
9 actions by disabled persons under the Americans with Disabilities Act of 1990.” *Id.* ¶ 14  
10 (emphasis in original).

11 The parties are currently engaged in litigation elsewhere, too -- there is a “probate action  
12 now pending in Alameda County Superior Court.” *Id.* ¶ 25. For the action before this Court, the  
13 factual gravamen of Mr. Rein’s complaint is that defendants allegedly “entered into a plan to  
14 defraud Paul Rein of his rights to the joint tenancy properties of his home and office upon  
15 Brenda’s death, by use of grant deeds, creation of a ‘trust’ and a ‘pour-over will,’ all to be signed  
16 by Brenda and making Keith and her brother Vincent the only beneficiaries.” *Id.* ¶ 16. Mr. Rein  
17 alleges that pursuant to this plan, defendants “induce[d] Brenda to sign [a] Will and Trust  
18 disinheriting Paul,” and that they also recently sought in the probate action “to have the court turn  
19 over to Keith half of the value of Paul’s law practice (as well as half of his house and half of his  
20 law office condominium).” *Id.* ¶ 30. Importantly, in light of the claims alleged in this action,  
21 Mr. Rein alleges that these actions by defendants were taken in order “to retaliate against Paul  
22 Rein for representing disabled persons in ADA disability rights discrimination cases against  
23 corporations, and to weaken and destroy Paul’s law practice.” *Id.*

24 Based on these allegations, Mr. Rein asserts four causes of action against defendants:  
25 (1) violation of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 et seq.;  
26 (2) violation of the Unruh Civil Rights Act, California Civil Code Sections 51 and 52, on the basis  
27 of disability; (3) financial elder abuse by encumbering the property rights of a person aged 65 or  
28 over; and (4) fraud (“as an alternative depending on factual findings at trial”). *Id.* at 18-26.



1 by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (internal  
2 quotation marks and citation omitted).

3 FRCP 11(b) provides that “[b]y presenting to the court a pleading, written motion, or other  
4 paper . . . an attorney or unrepresented party certifies,” among other things, that “it is not being  
5 presented for any improper purpose” and that “the claims, defenses, and other legal contentions  
6 are warranted by existing law or by a nonfrivolous argument for extending, modifying, or  
7 reversing existing law or for establishing new law.” The Court may impose an appropriate  
8 sanction if, “after notice and a reasonable opportunity to respond,” the Court determines that Rule  
9 11(b) has been violated. Fed. R. Civ. P. 11(c)(1). There is, however, a special procedure that  
10 applies to motions seeking sanctions under Rule 11(b). Such a motion “must be served under Rule  
11 5,” but it “must not be filed or be presented to the court if the challenged paper, claim, defense,  
12 contention or denial is withdrawn or appropriate corrected within 21 days after service or within  
13 another time the court sets.” *Id.* 11(c)(2).

## 14 II. MOTION TO DISMISS

15 As an initial matter, the tenor of the papers filed by both sides makes clear that this dispute  
16 is a highly personal and emotional family conflict. A substantial number of the parties’ filings are  
17 papers that have no relevance to the legal dispute presently before the Court and no place in a  
18 motion to dismiss (or motion for sanctions) proceeding. The Court disregards those for all  
19 purposes here.

20 The main legal question that is before the Court is straightforward: can Mr. Rein state a  
21 claim under the ADA based on the facts alleged here, which are obviously quite different from the  
22 usual ADA case? The statutory framework that dictates the answer is, on the other hand, quite  
23 complex, and the parties’ voluminous filings shed almost no light at all on the actual analysis the  
24 Court must undertake to resolve defendants’ motion to dismiss.

25 For example, defendants argue that it “stands to reason” that “in order to assert a claim  
26 under the ADA, a plaintiff must assert that he or she is an individual with a disability.” Dkt.  
27 No. 12 at 5. But the Court finds this argument to be wrong both as a matter of the plain language  
28 of the statute and the relevant case law. *See* 42 U.S.C. § 12203(a)-(b) (prohibiting certain conduct

1 against “any individual” that has been taken “because such individual has opposed any act or  
2 practice made unlawful by this chapter” or “on account of his or her having aided or encouraged  
3 any other individual in the exercise or enjoyment of, any right granted or protected by this  
4 chapter.”). *See also, e.g., Brooks v. Capistrano Unified School District*, 1 F. Supp. 3d 1029, 1036  
5 (C.D. Cal. 2014) (finding that a special education teacher who appears not to have been disabled  
6 herself had engaged in a “protected activity” under the ADA by advocating on behalf of her  
7 disabled students).

8 The more difficult question raised by defendants’ motion is whether plaintiff can state an  
9 ADA claim against individual persons like the two defendants here who are not plaintiff’s  
10 employer, a state or local governmental agency, or owners of a place of public service or  
11 accommodation. *See* Dkt. No. 12 at 5. Mr. Rein’s only response on this point is that defendants’  
12 such argument is “of course incorrect, as plaintiff’s First Cause of Action is properly pled under  
13 § 12203, part of Title V of the ADA, while ‘employment’ is covered under Title I.” Dkt. No. 20 at  
14 3.

15 While Mr. Rein is correct that the statutory language does indeed suggest on its face that  
16 any “person” may be sued under the section of the ADA that he has invoked, a deeper dive into  
17 the statute shows why such a reading is not sustainable. While neither the Supreme Court nor the  
18 Ninth Circuit has ruled on this issue, one district court has persuasively observed:

19 Subsection 12203(a) broadly prohibits retaliation by a “person.”  
20 Subsection 12203(c) outlines the remedies available to an aggrieved  
21 person complaining of retaliation by referring that individual to the  
22 remedial sections of the appropriate subchapter. An aggrieved party  
23 who complains that a “person” retaliated against him or her in the  
24 context of employment is referred to Section 12117. An aggrieved  
25 party who complains that a “person” retaliated against him or her in  
26 the context of public services is referred to Section 12133. An  
27 aggrieved party who complains that a “person” retaliated against  
28 him or her in the context of public accommodation is referred to  
29 Section 12188. Therefore, *which remedies* a plaintiff is afforded  
30 depends on whether the alleged retaliation occurred with respect to  
31 employment, public services, or public accommodations.

32 *Stern v. California State Archives*, 982 F. Supp. 690, 693 (E.D. Cal. 1997) (emphasis in original).

33 Subsection 12203(c) outlines the remedies for subsections 12203(a) and (b), both of which  
34 Mr. Rein has brought suit under in this case. The obvious implication from the way subsection

1 12203(c) is structured is that a plaintiff can only state a claim under subsections 12203(a) and (b)  
2 against “persons” in the contexts of employment, public services or public accommodation, as it  
3 provides no remedy outside of those contexts. None of the contexts outlined by subsection  
4 12203(c) apply here.

5 Similarly, this Court has held:

6 While the Ninth Circuit has not specifically ruled on this matter, . . .  
7 [t]he Fourth Circuit reasoned that “[t]he remedies available for a  
8 violation of the antiretaliation provision of the ADA in the  
9 employment context are set forth in 42 U.S.C. § 12117” and section  
10 12117 “specifically makes the remedies available under Title VII  
11 applicable to actions under the ADA.” *Baird*, 192 F.3d at 471.  
12 “Because Title VII does not authorize a remedy against individuals  
13 for violation of its provisions, and because Congress has made the  
14 remedies available in Title VII applicable to ADA actions, the ADA  
15 does not permit an action against individual defendants for  
16 retaliation for conduct protected by the ADA.” *Id.* at 472. The  
17 *Ostrach* court’s focus on the word “person” overlooks this structure  
18 of the ADA. *See Stern*, 982 F.Supp. at 694. [¶] The Court finds the  
19 reasoning of the majority of courts persuasive and concludes that an  
20 individual cannot be liable under the ADA, including an ADA  
21 retaliation claim. Plaintiff’s ADA claim against the individual  
22 defendants must therefore be dismissed without leave to amend.

23 *Cai v. Chiron Corp.*, No. C 04-1587 CRB, 2004 WL 1837985, at \*4 (N.D. Cal. Aug. 17, 2004).

24 The Court agrees with the statutory construction and inferences stated in these cases, and  
25 finds that the individual defendants named here cannot be liable for plaintiff’s claims under  
26 Section 12203 of the ADA. Because this is a legal deficiency that cannot be fixed by amendment,  
27 the Court dismisses the ADA claim against both defendants with prejudice.

28 Plaintiff’s complaint itself acknowledges that his ADA claim is the only basis for federal  
jurisdiction in this case. *See* Dkt. No. 6 ¶ 3. Because that lone federal claim is now dismissed  
with prejudice, and this case is in an early stage with little investment of time or work by the Court  
or the parties beyond this motion, the Court declines to exercise supplemental jurisdiction over  
plaintiff’s remaining state law claims. *See* 28 U.S.C. § 1367(c) (“The district courts may decline  
to exercise supplemental jurisdiction over a claim under subsection (a) if . . . the district court has  
dismissed all claims over which it has original jurisdiction”); *see also Acri v. Varian Associates,*  
*Inc.*, 114 F.3d 999, 1001 (9th Cir. 1997) (“The Supreme Court has stated, and we have often  
repeated, that ‘in the usual case in which all federal-law claims are eliminated before trial, the

1 balance of factors . . . will point toward declining to exercise jurisdiction over the remaining state-  
2 law claims.”) (quoting *Carnegie-Mellon University v. Cohill*, 484 U.S. 343, 350 n.7 (1988)).

3 **III.MOTION FOR SANCTIONS**

4 Although the Court has concluded that plaintiff’s ADA claim should be dismissed without  
5 leave to amend, the Court does not find that it was frivolous in nature, and the Court does not  
6 otherwise find that plaintiff’s complaint violated FRCP 11(b). Moreover, defendants have  
7 conceded that they themselves have violated the “safe harbor” period of Rule 11(c)(2). *See* Dkt.  
8 No. 31. The Court consequently denies the motion for sanctions.

9 **CONCLUSION**

10 For the reasons set forth above, defendants’ motion to dismiss is granted without leave to  
11 amend, and defendants’ motion for sanctions is denied.

12 The Clerk of the Court is directed to close the file.

13 **IT IS SO ORDERED.**

14 Dated: November 10, 2014

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17 JAMES DONATO  
18 United States District Judge

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