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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PETER STROJNIK SR.,
Plaintiff,
v.
XENIA HOTELS & RESORTS, INC.,
Defendant.

Case No. 19-cv-03082-NC

**ORDER GRANTING IN PART
AND DENYING IN PART
MOTION TO DISMISS;
DENYING MOTION TO
DECLARE PLAINTIFF A
VEXATIOUS LITIGANT**

Re: Dkt. No. 27

Plaintiff Peter Strojnik, Sr. sued defendant Xenia Hotels & Resorts, Inc. for violation of the American with Disabilities Act, California Unruh Civil Rights Act, California Disabled Persons Act, and for negligence. See Dkt. No. 1. Before the Court is Xenia's motion to dismiss for failure to establish Article III standing and to state a claim for relief. See Dkt. No. 27. After considering the party's briefings, the Court concludes that Strojnik fails to state a claim except as to the non-compliant doors at the hotel. Accordingly, the Court GRANTS Xenia's motion to dismiss in part and DENIES in part. The Court also DENIES Xenia's motion to declare Strojnik a vexatious litigant as premature.

I. Background.

A. Factual Allegations

Plaintiff Peter Strojnik alleges that he is a disabled person who suffers from right-sided neural foraminal stenosis with symptoms of femoral neuropathy, prostate cancer, renal cancer, and a degenerative right knee. Dkt. No. 1 ("Compl.") ¶ 3. His ability to walk

1 is impaired and he occasionally suffers pain when walking. Id. ¶ 3. As a result, he
2 requires “ambulatory and wheelchair assisted” lodging facilities. Id. ¶ 14.

3 Strojnik intended to visit the Santa Clara area and was looking for hotels online
4 where he came across the Hyatt Regency Santa Clara owned by Xenia. Id. ¶ 15. He
5 visited the hotel’s website and found insufficient information to allow him to assess
6 whether the hotel meets his accessibility needs. Id. ¶ 19. Moreover, he alleged that the
7 website made reservations differently for guests who required accessible guest rooms than
8 for guests who do not require such accommodations. Id. ¶ 20; see also id., Ex. A
9 (screenshots of website).

10 Strojnik also made a personal visit to the hotel and allegedly encountered
11 architectural barriers. Id. ¶¶ 23-24, 21-39. The barriers included an unmarked drop-off
12 zone, inaccessible check-in desks, lack of signage, inaccessible seating, non-compliant
13 doors, and inadequate grab bars and handrails. Id., Ex. A at 21–39.

14 These perceived violations prevented Strojnik’s full and complete enjoyment of the
15 hotel and caused him to book a room at another hotel. Id. ¶ 27. He intends to revisit
16 Xenia’s hotel when it becomes fully compliant with the ADA guidelines. Id. ¶12.

17 **B. Procedural Background**

18 Strojnik filed his complaint against Xenia on June 4, 2019, for (1) violation of the
19 Americans with Disabilities (“ADA”), (2) violation of the Unruh Act, (3) violation of the
20 California Disabled Persons Act (“DPA”), and (4) negligence. See Dkt. No. 1. In
21 response, the defendant filed the current motion to dismiss for lack of subject matter
22 jurisdiction and failure to state a claim. See Dkt. No. 27. All parties have consented to the
23 jurisdiction of a magistrate judge. See Dkt. Nos. 8, 11.

24 **II. Legal Standard**

25 **A. Federal Rule of Civil Procedure 12(b)(1)**

26 Dismissal under Federal Rule of Civil Procedure 12(b)(1) is appropriate when the
27 complaint fails to establish the subject matter jurisdiction over the action. *Roberts v.*
28 *Corrothers*, 812 F.2d 1173, 1177 (9th Cir. 1987). Article III of the U.S constitution “limits

1 federal courts’ subject matter jurisdiction by requiring, inter alia, that plaintiffs have
2 standing.” *Chandler v. State Farm Mut. Auto. Ins.*, 598 F.3d 1115, 1121 (9th Cir. 2010).

3 A plaintiff must demonstrate standing to sue by alleging the “irreducible
4 constitutional minimum” of: (1) an “injury in fact”; (2) that is “fairly traceable to the
5 challenged conduct of the defendants”; and (3) “likely to be redressed by a favorable
6 decision.” *Spokeo v. Robins*, 136 S. Ct. 1540, 1547 (2016). The specific element of injury
7 in fact is satisfied when the plaintiff has “suffered ‘an invasion of a legally protected
8 interest’ that is ‘concrete and particularized’ and ‘actual or imminent, not conjectural or
9 hypothetical.’” *Id.* at 1548 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560
10 (1992)). At the motion to dismiss stage, “general factual allegations of injury resulting
11 from the defendant’s conduct may suffice, [because] we ‘presum[e] that general
12 allegations embrace those specific facts that are necessary to support the claim.”” *Lujan*,
13 504 U.S. at 561, (1992) (quoting *Lujan v. National Wildlife Federation*, 497 U.S. 871,
14 889(1990)).

15 **B. Federal Rule of Civil Procedure 12(b)(6)**

16 A motion to dismiss for failure to state a claim under Rule 12(b)(6) tests the legal
17 sufficiency of a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). On a
18 motion to dismiss, all allegations of material fact are taken as true and construed in the
19 most favorable light to the non-movant. *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337–
20 38 (9th Cir. 1996). The Court, however, need not accept as true “allegations that are
21 merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” *In re*
22 *Gilead Scis. Secs. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008). A complaint need not give
23 detailed factual allegations but must contain sufficient factual matter, accepted as true, to
24 “state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S.
25 544, 570 (2007). A claim is facially plausible when it “allows the court to draw the
26 reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v.*
27 *Iqbal*, 556 U.S. 662, 678 (2009). If a court grants a motion to dismiss, the plaintiff should
28 be given leave to amend unless the pleading could not possibly be cured by the allegation

1 of other facts. *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000).

2 **III. Discussion**

3 **A. Americans with Disabilities Act Claim**

4 **1. Standing**

5 Under the ADA, plaintiffs may sue only for injunctive relief. *Pickern v. Holiday*
6 *Quality Foods Inc.*, 293 F.3d 1133, 1136 (9th Cir. 2002) (citing 42 U.S.C. § 12188(a)). To
7 satisfy standing requirements for injunctive relief, plaintiffs must show a “real and
8 immediate threat of repeated injury.” *Fortyune v. Am. Multi-Cinema, Inc.*, 364 F.3d 1075,
9 1081 (9th Cir. 2004).

10 In ADA cases, plaintiffs can establish standing “either by demonstrating deterrence,
11 or . . . injury in-fact coupled with an intent to return to a noncompliant facility.” *Chapman*
12 *v. Pier 1 Imports (U.S.) Inc.*, 631 F.3d 939, 944 (9th Cir. 2011). ADA plaintiffs can
13 establish standing if they personally encountered a non-compliant barrier related to their
14 disability and there is “a sufficient likelihood that [they] will again be wronged in a similar
15 way.” See *Chapman*, 631 F.3d at 948 (quoting *City of Los Angeles v. Lyons*, 461 U.S. 95,
16 111 (1983)). However, plaintiffs “need not engage in the ‘futile gesture’ of attempting to
17 gain access in order to show actual injury” when they have “actual knowledge of illegal
18 barriers at a public accommodation to which [they] desire[] access.” *Pickern*, 293 F.3d at
19 1135 (quoting 42 U.S.C. § 12188(a)(1)).

20 Likewise, an ADA plaintiff may also establish standing under the “deterrent effect”
21 doctrine. See *Chapman*, 631 F.3d at 953. Under this doctrine, plaintiffs have standing
22 “[s]o long as the discriminatory conditions continue, and so long as a plaintiff is aware of
23 them and remains deterred, the injury under the ADA continues.” *Pickern*, 293 F.3d at
24 1137. This is so because they “suffer[] the ongoing ‘actual injury’ of lack of access to the
25 [public accommodations].” *Chapman*, 631 F.3d at 949-50 (quoting *Pickern*, 293 F.3d at
26 1138).

27 In the complaint, Strojnik alleged that he was deterred from booking a room at
28 Xenia’s hotel in two ways. Strojnik claims that (1) Xenia’s website failed to provide

1 sufficient information for him to determine whether it had adequate accessibility features
2 (see Compl. ¶¶ 19–22) and that (2) he personally encountered accessibility barriers when
3 he visited Xenia’s hotel in-person (see *id.*, Ex. A). Strojnik further alleged that these
4 barriers deterred him from patronizing the hotel, but will do so once it becomes fully
5 compliant with the ADA guidelines. See *id.* ¶¶ 11–12.

6 These allegations suffice under the deterrent effect doctrine. Indeed, Strojnik’s
7 allegations closely mirror those accepted by the Ninth Circuit in *Civil Rights Educ. & Enf’t*
8 *Ctr. v. Hosp. Properties Tr.*, 867 F.3d 1093, 1099 (9th Cir. 2017) (“CREEC”). In that
9 case, the Ninth Circuit found sufficient that:

10 The Named Plaintiffs have alleged in the First Amended
11 Complaint that they intend to visit the relevant hotels, but have
12 been deterred from doing so by the hotels’ noncompliance with
13 the ADA. They further allege that they will visit the hotels when
14 the non-compliance is cured. Thus, the ADA violations have
15 prevented them from staying at the hotels. Without such
16 averments, they would lack standing. However, “construing the
17 factual allegations in the complaint in favor of the plaintiffs,” as
18 we must at this preliminary stage, we conclude that the Named
19 Plaintiffs have sufficiently alleged injury in fact. Their harm is
20 “concrete and particularized,” and their intent to visit the hotels
21 once they provide equivalent shuttle service for the disabled
22 renders their harm “actual or imminent, not conjectural or
23 hypothetical.”

17 *Id.* Thus, Xenia’s contention that Strojnik’s broad statement that “[he] intended to visit
18 Defendant’s Hotel at a specific time when the Defendant’s non-compliant Hotel becomes
19 fully compliant with ADAAG” is too hypothetical is unavailing. See Dkt. No. 27 at 17.

20 **2. Failure to State a Claim**

21 Xenia next argues that Strojnik did not allege enough facts about the hotel’s website
22 and architectural design to state a claim. See Dkt. No. 27 at 18–19. The Court discusses
23 each in turn.

24 **a. Website**

25 Strojnik claimed that Xenia’s hotel website¹ violated 28 C.F.R. 36.302(e)(1)(ii),
26

27 ¹ The complaint also contains various allegations relating to third-party websites. See, e.g.,
28 Compl. ¶¶ 16–18; Ex. A at 11–16. It is not clear why those allegations are relevant
because Strojnik does not allege that Xenia was responsible for those websites.

1 which requires facilities to “identify and describe accessible features . . . in enough detail
2 to reasonably permit individuals with disabilities to assess independently whether a given
3 hotel or guest room meets his or her accessibility needs.” However, he did not explain
4 what additional accessibility features the website failed to describe that would allow him to
5 make that reasonable judgment. Although Strojnik alleged that he had difficulty walking
6 and required ambulatory and wheelchair assisted lodging, it is unclear whether Xenia’s
7 website lacked information on those accommodations. Indeed, the screenshots provided
8 by Strojnik demonstrate that Xenia’s website in fact described some accessibility features,
9 such as accessible hotel areas and room features. See Compl., Ex. A at 16–19. And it is
10 not clear that the ADA requires Xenia to list its compliance or noncompliance with each
11 and every ADA-mandated feature. See, e.g., *Barnes v. Marriott Hotel Servs., Inc.*, No. 15-
12 cv-01409-HRL, 2017 WL 635474, at *9–10 (N.D. Cal. Feb. 16, 2017) (citing Department
13 of Justice guidance explaining what level of detail is sufficient). Without further
14 explanation, the Court is unable to determine whether the hotel’s website gave Strojnik
15 enough detail to reasonably permit him to assess whether the hotel met his needs.

16 Strojnik also alleged that Xenia’s website reserved accessibility rooms differently
17 than non-accessibility rooms. Strojnik gave no additional explanation of this purported
18 difference and merely pointed to screenshots of the website. However, the screenshots
19 provided no further insight into the allegedly different reservation procedure. As with his
20 other website-related claim, Strojnik’s vague assertions are insufficient. Accordingly, the
21 Court GRANTS Xenia’s motion to dismiss Strojnik’s ADA claim as to the website.
22 Dismissal is with leave to amend because Strojnik could conceivably allege facts curing
23 the deficiencies outlined above.

24 **b. Personal Encounters**

25 Strojnik next alleged that he encountered barriers when he visited Xenia’s hotel that
26 prevented his full use and enjoyment of the facilities. Xenia contends that Strojnik failed
27 to allege that any specific barrier denied him access on account of his particular disability.
28 See Dkt. No. 27 at 19.

1 As noted above, Strojnik submitted various pictures of Xenia’s hotel showing the
 2 barriers he allegedly encountered. Some of those pictures reveal barriers that could be
 3 linked to Strojnik’s disability. For example, Strojnik alleged that one of the doors leading
 4 outside required 14 pounds of force to open and one of the restroom doors required 16
 5 pounds to open. Accepting these allegations as true, as the Court must on a motion to
 6 dismiss, both doors exceed the ADA-mandated limit of 5lbs of force. See 2010 ADA
 7 Accessibility Guideline (“ADAAG”) §404.2.9. Given that Strojnik alleged that he has
 8 difficulty walking, the Court can plausibly infer that he would also have difficulty exerting
 9 the physical force necessary to open a door.

10 Most of the alleged barriers, however, are not so easily connected to Strojnik’s
 11 alleged disability. For example, Strojnik notes that Xenia’s hotel does not have a marked
 12 drop-off zone, has inaccessible check-in counters and seating, and lacks signage at an
 13 inaccessible escalator pointing to an accessible route. See Compl., Ex. A. But Strojnik
 14 does not allege that he requires the use of a wheelchair or has some other disability that,
 15 for example, makes him unable to use an escalator. In other words, Strojnik fails to
 16 connect his disability to the barriers alleged. See Chapman, 631 F.3d at 947 (“[A] ‘barrier’
 17 will only amount to such interference if it affects the plaintiff’s full and equal enjoyment of
 18 the facility on account of his particular disability.”). Indeed, Strojnik’s sole attempt to do
 19 so is wholly conclusory. See id., Ex. A at 39 (allegation relating to “[t]he manner in which
 20 the barriers denied [him] full and equal use or access”).

21 Accordingly, the Court DENIES IN PART Xenia’s motion to dismiss Strojnik’s
 22 ADA claim to the extent it relies on non-compliant doors. The Court otherwise GRANTS
 23 IN PART Xenia’s motion to dismiss Strojnik’s ADA claim. As with Strojnik’s website-
 24 related claim, dismissal is with leave to amend.

25 **B. Unruh and Disabled Persons Act**

26 Xenia moves to dismiss Strojnik’s damages claim under the Unruh Act and the
 27 Disabled Persons Act (“DPA”) for lack of statutory standing because Strojnik failed to
 28 show that he was actually denied equal access on a particular occasion. Dkt. No. 27 at 20.

1 A violation of the ADA is a violation of the Unruh Act and DPA. See Cal. Civ.
2 Code § 51(f), 54(c). Unlike the ADA, however, both the Unruh Act and the DPA permit
3 plaintiffs to recover damages in addition to injunctive relief, but California law “requires
4 something more than mere awareness of or a reasonable belief about the existence of a
5 discriminatory condition” before a plaintiff can recover damages. *Reycraft v. Lee*, 177
6 Cal. App. 4th 1211, 1221 (2009). Because the Unruh Act and the DPA permits causes of
7 action for equitable relief to any “aggrieved” plaintiff, but limits causes of action for
8 damages to only defendants that “deny” equal access, California courts require plaintiffs to
9 show actual denial of access to claim damages. See *Urhausen v. Longs Drug Stores Cal.,*
10 *Inc.*, 155 Cal. App. 4th 254, 265–66 (2007); compare Cal. Civ. Code §§ 52(a), 55 with id.
11 §§ 52(c)(3), 54.3. Put simply, “while virtually any disabled person can bring an action to
12 compel compliance with the DPA under section 55, a plaintiff cannot recover damages
13 under section 54.3 unless the violation actually denied him or her equal access to some
14 public facility.” *Turner v. Assoc. of Am. Med. Colleges*, 193 Cal. App. 4th 1047, 1059
15 (2011) (quoting *Urhausen*, 155 Cal. App. 4th at 265–66 (2007)).

16 *Urhausen* is instructive. There, a disabled plaintiff visited a drug store and chose to
17 park in an ordinary parking space instead of an unoccupied parking space reserved for use
18 by disabled persons. *Urhausen*, 155 Cal. App. 4th at 257. As the plaintiff walked from
19 her parking space to the store, she did not use the disabled access aisle and curb, but
20 instead chose to walk across a non-access aisle where she encountered a non-compliant
21 curb. *Id.* at 258–60. That curb was too steep, causing the plaintiff to fall and fracture her
22 wrist. *Id.* The California Court of Appeal held that the plaintiff did not establish statutory
23 standing for her damages claim because the drug store provided an alternate means of
24 access by way of a disability access aisle. *Id.* at 262. Because that alternate means of
25 access was available, the drug store did not actually deny access. *Id.* at 263–65. The
26 Court of Appeal reasoned that “equat[ing] a denial of equal access with the presence of a
27 violation of federal or state regulations would . . . eliminate any distinction between a
28 cause of action for equitable relief under section 55 and a cause of action for damages

1 under section 54.3.” Id. at 266.

2 Here, as explained above, Strojnik has stated a violation of the ADA due to Xenia’s
3 non-compliant doors. Strojnik, however, has not alleged facts that allow the Court to infer
4 that those violations actually denied him full and equal access to the hotel. He did not, for
5 example, allege that there were no other ADA-compliant restrooms or means of entry
6 thereby preventing his full and equal access to the hotel’s facilities. At most, Strojnik
7 merely alleged that Xenia’s hotels were not fully compliant with the ADA. This, however,
8 is insufficient to establish statutory standing for damages. See *Urhausen*, 155 Cal. App.
9 4th at 265. Accordingly, the Court GRANTS Xenia’s motion to dismiss Strojnik’s Unruh
10 Act and DPA claims for damages. Dismissal is with leave to amend.

11 **C. Negligence Per Se**

12 Under California law, “a presumption of negligence arises from the violation of a
13 statute which was enacted to protect a class of persons of which the plaintiff is a member
14 against the type of harm which the plaintiff suffered as a result of the violation of the
15 statute.” *Urhausen*, 155 Cal. App. 4th at 267 (quoting *Hoff v. Vacaville Unified School*
16 *Dist.* 19 Cal.4th 925, 938, (1998)). District courts disagree as to whether a violation of the
17 ADA can support a claim for negligence. Compare *Jones v. Amtrak*, No. 15-cv-02726-
18 TSH, 2020 WL 353537, at *6 n.6 (N.D. Cal. Jan. 21, 2020) (listing cases holding that a
19 violation of the ADA cannot support a negligence claim) with *Strojnik v. 574 Escuela,*
20 *LLC*, No. 3:18-cv-06777-JD, 2020 WL 1557434, at 5 (N.D. Cal. Mar. 31, 2020) (denying
21 motion to dismiss negligence per se claim based on alleged ADA violations).

22 However, it is unnecessary for the Court to resolve that disagreement. Strojnik
23 failed to allege what injury Xenia’s conduct allegedly caused. His vague allegations that
24 Xenia caused him “damage” or “injury” (see Compl. ¶¶ 55, 57, 59, 65) are too vague for
25 the Court to determine whether his injuries are the type the ADA, Unruh Act, and DPA are
26 designed to prevent. Cf. *Urhausen*, 155 Cal. App. 4th at 268 (analyzing whether the
27 plaintiff’s fractured wrist was an injury contemplated by California’s accessibility
28 regulations). Accordingly, the Court GRANTS Xenia’s motion to dismiss Strojnik’s

1 negligence per se claim. Dismissal is with leave to amend.

2 **D. Vexatious Litigant**

3 Under the power of 28 U.S.C. § 1651(a), the Court may enjoin litigants “with
4 abusive and lengthy histories.” De Long v. Hennessey, 912 F.2d 1144, 1147 (9th Cir.
5 1990). This means that the Court may enter a pre-filing order placing restrictions on what
6 cases vexatious litigants may file. Id. This is “an extreme remedy.” Id. (quoting Pavlonis
7 v. King, 626 F.2d 1075, 1079 (1st Cir. 1980)). “The use of such measures against a pro se
8 plaintiff should be approached with particular caution.” Id. When a court enters a
9 vexatious litigant order, it must (1) give notice and an opportunity to be heard to the
10 litigant; (2) compile an adequate record for review; (3) make substantive findings that the
11 litigant’s filings are frivolous or harassing; and (4) ensure that the pre-filing order is not
12 overly broad and is narrowly tailored. De Long, 912 F.2d at 1148.

13 Xenia’s motion to declare Strojnik a vexatious litigant is premature. Before
14 declaring a plaintiff vexatious, the Court must find that the individual’s filings are not just
15 numerous but also “patently without merit.” Molski v. Evergreen Dynasty Corp., 500 F.3d
16 1047, 1059 (9th Cir. 2007). Here, however, the Court did not find that Strojnik’s claims
17 are frivolous or patently without merit. Accordingly, the Court DENIES Xenia’s motion
18 to declare Strojnik a vexatious litigant.

19 **IV. Conclusion**

20 The Court DENIES Xenia’s motion to dismiss as to Strojnik’s ADA claim to the
21 extent it relies on non-compliant doors. The Court otherwise GRANTS Xenia’s motion to
22 dismiss with leave to amend. Strojnik must amend his complaint or notify the Court that he
23 does not intend to amend by **June 26, 2020**. The amended complaint may not add any
24 claims or parties without leave of Court.

25 **IT IS SO ORDERED.**

26
27 Dated: June 9, 2020

28

NATHANAEL M. COUSINS
United States Magistrate Judge