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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SCOTT SCHUTZA,

Plaintiff,

v.

WILLIAM B. CUDDEBACK; LOU G.
CUDDEBACK; INTERSTATE GROUP
LLC,

Defendants.

Case No. 16-cv-02746-BAS-KSC

**ORDER GRANTING DEFENDANTS’
MOTION TO DISMISS STATE LAW
CLAIM [ECF No. 5]**

On November 07, 2016, Plaintiff Scott Schutza commenced this civil action against Defendants William Cuddeback, Lou Cuddeback, and Interstate Group, LLC (“Defendants”) alleging violations of the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.* (“ADA”), and California’s Unruh Civil Rights Act §§ 51–53 (“Unruh Act”). Defendants now move to dismiss the state law claim for lack of subject matter jurisdiction under 28 U.S.C. § 1367. Plaintiff has not opposed.¹

¹ The Court would be within its discretion to grant Defendants’ motion to dismiss based on Plaintiff’s failure to file an opposition. *See* CivLR 7.1(f)(3)(c) (“If an opposing party fails to file the papers in the

1 The Court finds this motion suitable for determination on the papers submitted and
2 without oral argument. *See* Fed. R. Civ. P. 78(b); CivLR 7.1(d)(1). For the following
3 reasons, the Court **GRANTS** Defendants’ motion to dismiss Plaintiff’s state law claim.²
4 (ECF No. 5.)

5 **I. BACKGROUND**

6 Plaintiff Scott Schutza is a paraplegic who uses a wheelchair for mobility. (Compl.
7 ¶ 1.) Defendants own the real property known as “TrailersPlus” located at or about 12024
8 Woodside Avenue, Lakeside, California. (*Id.* ¶¶ 2–5.)

9 In February 2016, Plaintiff went to TrailersPlus in search of a trailer. (*Id.* ¶ 10.)
10 However, as a result of his physical disabilities, Plaintiff alleges he was unable to access
11 or use the property because of various access barriers, including barriers in the parking lot,
12 at the entrance door, in the establishment itself, and in the restroom area. (*Id.* ¶¶ 22–27.)
13 Plaintiff contends that he personally encountered said problems, and consequently, was
14 denied full and equal access of the property. (*Id.* ¶ 28.)

15 On November 7, 2016, Plaintiff sued Defendants for violations of the ADA and the
16 Unruh Act. Plaintiff seeks monetary damages under the Unruh Act and injunctive relief
17 under the ADA. (Compl. 9:18–25.)

18 On December 1, 2016, Defendants filed a motion to dismiss Plaintiff’s state law
19 claim pursuant to 28 U.S.C. § 1367(c). Defendants primarily contend that: (1) Plaintiff’s
20 state law claim raises novel and complex issues of state law due to California’s recent
21 adoption of pleading requirements for disability discrimination lawsuits; (2) the state law
22 claim substantially predominates over the federal law claim because Plaintiff is seeking
23 statutory damages only available under California law; and (3) Plaintiff is engaging in
24

25 manner required by [the Local Rules], that failure may constitute a consent to the granting of a motion or
26 other request for ruling by the court.”); *see also Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (“Failure
27 to follow a district court’s local rules is a proper ground for dismissal.”). However, in this case, the Court
28 will proceed to the merits.

² The Court retains jurisdiction over the ADA claim.

1 forum shopping. (EFC No. 5.)

2 **II. LEGAL STANDARD**

3 The federal supplemental jurisdiction statute provides:

4 [I]n any civil action of which the district courts have original jurisdiction, the
5 district courts shall have supplemental jurisdiction over all other claims that
6 are so related to claims in the action within such original jurisdiction that they
7 form part of the same case or controversy under Article III of the United States
8 Constitution.

8 28 U.S.C. § 1367(a). Supplemental jurisdiction is mandatory unless prohibited by §
9 1367(b), or unless one of the exceptions in § 1367(c) applies. Under § 1367(c), a district
10 court may decline supplemental jurisdiction over a state law claim if:

- 11 (1) the claim raises a novel or complex issue of State law,
- 12 (2) the claim substantially predominates over the claim or claims over which
13 the district court has original jurisdiction,
- 14 (3) the district court has dismissed all claims over which it has original
15 jurisdiction, or
- 16 (4) in exceptional circumstances, there are other compelling reasons for
17 declining jurisdiction.

17 28 U.S.C. § 1367(c). Underlying the § 1367(c) inquiry are considerations of judicial
18 economy, convenience and fairness to litigants, and comity. “[I]f these are not present a
19 federal court should hesitate to exercise jurisdiction over state law claims[.]” *United Mine*
20 *Workers v. Gibbs*, 383 U.S. 715, 726 (1966).

21 Under § 1367(c), “a district court can decline jurisdiction under any one of [the
22 statute’s] four provisions.” *San Pedro Hotel Co. v. City of L.A.*, 159 F.3d 470, 478 (9th Cir.
23 1998). When a district court declines supplemental jurisdiction over a state law claim
24 pursuant to one of the first three provisions of the statute—that is, §§ 1367(c)(1)–(3)—the
25 court need not state its reasons for dismissal. *Id.* However, when the court declines
26 supplemental jurisdiction pursuant to the statute’s “exceptional circumstances”
27 provision—that is, § 1367(c)(4)—the court must “articulate why the circumstances of the
28 case are exceptional,” and consider whether values of judicial economy, convenience,

1 fairness, and comity provide compelling reasons for declining jurisdiction. *Exec. Software*
2 *N. Am., Inc. v. U.S. Dist. Court*, 24 F.3d 1545, 1552 (9th Cir. 1994).

3 **III. DISCUSSION**

4 **A. The ADA**

5 The ADA prohibits discrimination “on the basis of disability in the full and equal
6 enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of
7 any place of public accommodation by any person who owns, leases (or leases to), or
8 operates a place of public accommodation.” 42 U.S.C. § 12182(a). A sales or rental
9 establishment is a “public accommodation” for purposes of the ADA. 42 U.S.C. §
10 12181(7)(E).

11 To prevail on a claim under the ADA, a plaintiff must prove that (1) he or she has a
12 disability; (2) the defendant operates, leases, or owns a place of public accommodation;
13 and (3) the plaintiff was denied appropriate accommodations by the defendant because of
14 his or her disability. *Molski v. M.J. Cable, Inc.*, 481 F.3d 724, 730 (9th Cir. 2007). “[A]
15 plaintiff need not show intentional discrimination in order to make out a violation of the
16 ADA.” *Lentini v. Cal. Ctr. for the Arts, Escondido*, 370 F.3d 837, 846 (9th Cir. 2004).
17 Under the ADA, “damages are not recoverable . . . only injunctive relief is available.”
18 *Wander v. Kaus*, 304 F.3d 856, 858 (9th Cir. 2002) (citing 42 U.S.C. § 12188(a)(1)).

19 **B. The Unruh Act**

20 The Unruh Act provides in part that “[a]ll persons within the jurisdiction of
21 [California] are free and equal, and no matter what their . . . disability . . . are entitled to
22 the full and equal accommodations, advantages, facilities, privileges, or services in all
23 business establishments of every kind whatsoever.” Cal. Civ. Code § 51(b). The Unruh Act
24 also provides that a violation of the federal ADA constitutes a violation of § 51 of the
25 Unruh Act. Cal. Civ. Code § 51(f).

26 As a general matter, a claim under the Unruh Act requires a plaintiff to allege an
27 intentional act or omission on behalf of defendant. *See Org. for the Advancement of*
28 *Minorities v. Brick Oven Rest.*, 406 F. Supp. 2d 1120, 1129 (S.D. Cal. 2005). Thus, “[a]

1 violation of the Unruh Act may be maintained independent of an ADA claim where a
2 plaintiff pleads ‘intentional discrimination in public accommodations in violation of the
3 terms of the [Unruh] Act.’” *Schutz v. McDonald's Corp.*, 133 F. Supp. 3d 1241, 1247
4 (S.D. Cal. 2015) (citations omitted). However, a showing of intentional discrimination is
5 not required where a plaintiff brings an Unruh Act claim on the grounds that a defendant
6 has violated the ADA. *See Munson v. Del Taco, Inc.*, 208 P.3d 623, 628–29 (Cal. 2009);
7 *see also Lentini*, 370 F.3d at 847 (“[N]o showing of intentional discrimination is required
8 where the Unruh Act violation is premised on an ADA violation.”).

9 Unlike the ADA, the Unruh Act allows for recovery of monetary damages. A
10 plaintiff may recover actual damages for each and every offense “up to a maximum of three
11 times the amount of actual damage but in no case less than four thousand dollars
12 (\$4,000)[.]” Cal. Civ. Code § 52(a). “The litigant need not prove she suffered actual
13 damages to recover the independent statutory damages of \$4,000.” *Molski*, 481 F.3d at 731
14 (citing *Botosan v. Paul McNally Realty*, 216 F.3d 827, 836 (9th Cir. 2000)).

15 **IV. ANALYSIS**

16 **A. Plaintiff’s State Law Claim Substantially Predominates**

17 Defendants argue that Plaintiff’s state law claim substantially predominates over his
18 ADA claim under § 1367(c)(2). The Court agrees for two main reasons.

19 First, when considering the number of violations alleged by Plaintiff, the total
20 amount of damages available to him under the Unruh Act—a minimum of \$4,000 for each
21 offense—indicates that Plaintiff’s predominant focus is recovering monetary damages
22 under state law. At a minimum, Plaintiff alleges the following nine individual violations:
23 (1) the raised threshold at the entrance door is greater than the permitted threshold for the
24 type of door; (2) the entrance is inaccessible to Plaintiff; (3) parking is inaccessible to
25 Plaintiff; (4) there are no parking spaces designed and reserved for persons with
26 disabilities; (5) there is no lowered portion of transaction counters for persons in
27 wheelchairs; (6) the restroom doorway clear passage is inaccessible to Plaintiff; (7) the
28 restroom does not have grab bars for use by persons with disabilities; (8) the sink lacks

1 knee clearance for wheelchair use; and (9) the restroom mirror is mounted higher than the
2 maximum permitted. (Compl. ¶¶ 13–27.) These nine allegations, if proven, would entitle
3 Plaintiff to a minimum monetary award of \$36,000. In contrast, under the ADA, Plaintiff
4 would only be entitled to injunctive relief. Thus, under the circumstances presented, the
5 Court finds that the monetary damages sought by Plaintiff under the Unruh Act
6 substantially predominate over federal injunctive relief. *See Brick Oven Rest.*, 406 F. Supp.
7 2d at 1131 (finding that statutory damages available under the Unruh Act substantially
8 predominated over injunctive relief available under the ADA where the plaintiff alleged
9 distinct violations that, if proven, would entitle him to an award of \$56,000); *see also*
10 *Molski v. Hitching Post I Rest., Inc.*, No. CV 04-1077SVWRNBX, 2005 WL 3952248, at
11 *7 (C.D. Cal. May 25, 2005) (finding that statutory damages available under the Unruh
12 Act substantially predominated over injunctive relief available under the ADA where the
13 plaintiff alleged 13 allegations that, if proven, would entitle plaintiff to an award of
14 \$52,000).

15 Second, Plaintiff places intentionality at the heart of his claims for relief (*see* Compl.
16 ¶ 35), which when combined with the amount of monetary relief sought, strongly suggests
17 the Unruh Act claim substantially predominates. As the Court noted earlier, intentional
18 discrimination is unnecessary to establish a violation under the ADA. However,
19 intentionality is relevant to Plaintiff’s state law claim because it allows Plaintiff to maintain
20 an independent action under the Unruh Act. *See Earll v. eBay, Inc.*, No. 5:11-CV-00262-
21 JF HRL, 2011 WL 3955485, at *3 (N.D. Cal. Sept. 7, 2011) (“A violation of the Unruh
22 Act may be maintained independent of an ADA claim where a plaintiff pleads intentional
23 discrimination in public accommodations in violation of the terms of the Act.”).
24 Furthermore, resolving the issue of intentional discrimination “entails application of state-
25 law standards.” *Schutz*, 133 F. Supp. 3d at 1247 (finding that plaintiff’s allegations of
26 intentional discrimination was one of the main reasons why plaintiff’s state law claims
27 substantially predominated over his ADA claim). Thus, Plaintiff’s allegation of intentional
28 discrimination bolsters the conclusion that his Unruh Act claim substantially predominates

1 over his ADA claim.

2 In sum, the Court finds that Plaintiff's state law claim under the Unruh Act
3 substantially predominates over his federal claim under the ADA.

4 **B. There Are Exceptional Circumstances Supported by Compelling Reasons**
5 **for Declining Supplemental Jurisdiction**

6 In considering values of judicial economy, convenience, fairness, and comity, the
7 Court finds compelling reasons for declining supplemental jurisdiction in this case. *See*
8 *Exec. Software N. Am., Inc.*, 24 F.3d at 1557.

9 In 2012, California adopted heightened pleading requirements for disability
10 discrimination lawsuits under the Unruh Act, including provisions requiring high-
11 frequency litigants to verify and specify their allegations. *See* Cal. Code Civ. Proc. §
12 425.50.³ The purpose of these heightened pleading requirements is to deter baseless claims
13 and vexatious litigation. *See e.g.*, SB 1186, Chapter 383 § 24 (Ca. 2012).

14 The Court notes that Plaintiff Schutza has filed over one hundred cases in this and
15 other courts alleging disability discrimination.⁴ As a high-frequency litigant primarily
16 seeking relief under state law, the Court finds it would be improper to allow Plaintiff to use
17 federal court as an end-around to California's pleading requirements. Therefore, as a matter
18 of comity, and in deference to California's substantial interest in discouraging unverified
19 disability discrimination claims, the Court declines supplemental jurisdiction over
20 Plaintiff's Unruh Act claim. *See Cross v. Pac. Coast Plaza Invs., L.P.*, No. 06 CV 2543 JM
21 RBB, 2007 WL 951772, at *5 (S.D. Cal. Mar. 6, 2007) (declining to exercise supplemental
22 jurisdiction over plaintiff's Unruh Act claims in the interest of comity and noting this
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24 ³ A plaintiff alleging disability discrimination under the Unruh Act must: (1) explain the specific access
25 barrier(s) encountered; (2) how the barrier(s) denied full and equal access on each particular occasion; and
26 (3) the specific date of each particular occasion. Additionally, except for complaints that allege injury or
27 damage, a complaint filed by or on behalf of a high-frequency litigant must state the number of claims the
28 plaintiff has filed in the previous 12 months and the reason and purpose for the plaintiff's desire to access
the defendant's business. *See* Cal. Code Civ. Proc. § 425.50.

⁴ According to PACER, Plaintiff Scott Schutza is a plaintiff in 127 cases as of March 27, 2017.

1 interest has become more compelling “as the courts struggle to resolve what is at the
2 moment an irreconcilable tension between the ADA and the Unruh Act”); *Hitching Post I*
3 *Rest.*, 2005 WL 3952248 at *8–9 (finding comity to be a compelling reason for declining
4 supplemental jurisdiction over state claims on the ground that California courts should have
5 the ability to interpret state disability laws).

6 Finally, and relatedly, the Court agrees with Defendants’ contention that Plaintiff is
7 engaging in forum-shopping by bringing his action in federal court and attempting to avoid
8 California’s heightened pleading requirements for disability discrimination claims. It is
9 unclear what advantage—other than avoiding state-imposed pleading requirements—
10 Plaintiff gains by being in federal court since his sole remedy under the ADA is injunctive
11 relief, which is also available under the Unruh Act. Federal courts may properly take
12 measures to discourage forum-shopping, *see, e.g., Hanna v. Plumer*, 380 U.S. 460, 467–
13 68 (1965), and here, where Plaintiff has filed over one hundred disability discrimination
14 cases, and settled more than fifty of them in a two-year period,⁵ the Court finds this to be
15 a compelling reason to decline supplemental jurisdiction. *See, e.g., Brick Oven Rest.*, 406
16 F. Supp. 2d at 1132 (“Because a legitimate function of the federal courts is to discourage
17 forum shopping and California courts should interpret California law . . . compelling
18 reasons exist to decline supplemental jurisdiction over plaintiff’s state law claims.”).

19 **V. CONCLUSION**

20 For the foregoing reasons, the Court finds that (1) Plaintiff’s state law claim under
21 the Unruh Act substantially predominates over his federal claim under the ADA, and (2)
22 there are otherwise exceptional circumstances—including comity and this Court’s interest
23 in discouraging forum-shopping—for declining supplemental jurisdiction over the Unruh
24 Act claim. Accordingly, the Court **GRANTS** Defendants’ motion to dismiss Plaintiff’s
25 state law claim under 28 U.S.C § 1367(c). (ECF No. 5.) The Court retains jurisdiction over
26 the ADA claim. Defendants shall file an answer or otherwise respond to the ADA claim no
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28 ⁵ According to PACER, Plaintiff has settled 56 disability cases since 2015.

1 later than April 24, 2017.

2 **IT IS SO ORDERED.**

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4 **DATED: April 10, 2017**

5 
6 **Hon. Cynthia Bashant**
7 **United States District Judge**

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