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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DOROTHY WHITE,

Plaintiff,

v.

WISCO RESTAURANTS, INC.,

Defendant.

Civil No.: 17cv103-L(JMA)
**ORDER DENYING DEFENDANT'S
MOTION TO DISMISS**

In this action alleging disabled access violations, Defendant Wisco Restaurants, Inc. filed a motion to dismiss for lack of standing and failure to state a claim, and requesting the Court to decline to exercise supplemental jurisdiction over state law claims. The Court decides the matter on the papers submitted and without oral argument. *See Civ. L. R. 7.1(d.1)*. For the reasons stated below, Defendant's motion is denied.

I. BACKGROUND

The action arises from Plaintiff's visit to Defendant's restaurant. She alleges that she had contracted polio and it is difficult for her to walk or stand. She uses a mobility equipped van and a manual wheelchair to travel in public. When she visited Defendant's restaurant, she encountered three barriers which interfered with her access. First, at least

1 one disabled parking space had slopes and/or cross slopes that were too steep to transfer
2 between a van and a wheelchair. Second, at least one of the van accessible parking
3 spaces was too small to make the transfer. Finally, there was insufficient clear space
4 under the lavatory to approach with a wheelchair close enough to wash hands. (Compl.
5 at 3.)

6 Plaintiff filed a complaint alleging violations of (1) the Americans with Disabilities
7 Act, 42 U.S.C. §12101 *et seq.* (“ADA”); (2) the Unruh Civil Rights Act, Cal. Civ. Code
8 §51 *et seq.* (“Unruh”); (3) the Disabled Persons Act, Cal. Civ. Code §54 *et seq.* (“DPA”);
9 and California Health and Safety Code §19955 *et seq.* The Court has subject matter
10 jurisdiction under 28 U.S.C. §§ 1331 and 1367(a).

11 Defendant moves to dismiss the initial complaint under Federal Rules of Civil
12 Procedure 12(b)(1) and (6) arguing that Plaintiff failed to sufficiently allege standing, the
13 Court should exercise its discretion to decline to exercise supplemental jurisdiction under
14 28 U.S.C. § 1367, and that Plaintiff failed to state a claim.

15 **II. DISCUSSION**

16 **A. Standing**

17 Defendant contends this action should be dismissed because Plaintiff did not
18 sufficiently allege standing. A federal court "may not decide a cause of action before
19 resolving whether the court has Article III jurisdiction." *RK Ventures, Inc. v. City of*
20 *Seattle*, 307 F.3d 1045, 1056 n.6. Federal jurisdiction under Article III depends on the
21 existence of a case or controversy. *SEC v. Med. Comm. for Human Rights*, 404 U.S. 403,
22 407 (1972). Standing is required to establish a case or controversy. *RK Ventures*, 307
23 F.3d at 1056 n.6.

24 Plaintiff has the burden of pleading standing:

25 [T]he plaintiff has the burden of proving jurisdiction in order to
26 survive the motion. A plaintiff suing in a federal court must
27 show in his pleading, affirmatively and distinctly, the existence
28 of whatever is essential to federal jurisdiction, and, if he does
not do so, the court, on having the defect called to its attention

1 or on discovering the same, must dismiss the case, unless the
2 defect be corrected by amendment.

3 *Tosco Corp. v. Communities for a Better Env't*, 236 F.3d 495, 499 (9th Cir. 2001)
4 (internal citations and quotation marks omitted) *abrogated on other grounds by Hertz*
5 *Corp. v. Friend*, 559 U.S. 77, 82-83 (2010).

6 Article III “requires federal courts to satisfy themselves that the plaintiff has
7 alleged such a personal stake in the outcome of the controversy as to warrant *his* [*or her*]
8 invocation of federal-court jurisdiction.” *Summers v. Earth Island Inst.*, 555 U.S. 488,
9 493 (2009) (internal quotation marks and citation omitted, emphasis in original).

10 [T]he "irreducible constitutional minimum" of standing consists
11 of three elements. The plaintiff must have (1) suffered an
12 injury in fact, (2) that is fairly traceable to the challenged
13 conduct of the defendant, and (3) that is likely to be redressed

14 *Spokeo, Inc. v. Robins*, 578 U.S. ___; 136 S.Ct. 1540, 1547 (2016) (quoting *Lujan v.*
15 *Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) and citing *Friends of the Earth, Inc.*
16 *v. Laidlaw Envt'l. Servs., Inc.*, 528 U.S. 167, 180-81 (2000)). "Where, as here, a case is
17 at the pleading stage, the plaintiff must clearly allege facts demonstrating each element."
18 *Spokeo*, 136 S.Ct. at 1547 (internal quotation marks, ellipsis and citation omitted).

19 Defendant contends that Plaintiff lacks standing because she did not allege a
20 "concrete and particularized injury" and her "Complaint remains conjectural and
21 hypothetical, failing to describe a factually supported, particular time where [*sic*] she was
22 injured. (Reply at 2.) Accordingly, inly the injury-in-fact element is disputed. A
23 plaintiff must allege "that he or she suffered an invasion of a legally protected interest
24 that is concrete and particularized and actual or imminent, not conjectural or
25 hypothetical." *Spokeo*, 136 S.Ct. at 1548 (internal quotation marks and citation omitted).
26 It is not necessary, however, to allege "a particular time," as Defendant claims.

27 Because the existence of federal standing “often turns on the nature and source of
28 the claim asserted,” the standing analysis must focus on the nature and source of

1 Plaintiff's claim: disabled access discrimination. *Chapman v. Pier 1 Imports (U.S.), Inc.*,
2 631 F.3d 939, 947 (9th Cir. 2011) (quoting *Warth v. Seldin*, 422 U.S. 490, 500 (1975)).
3 At the same time, however, "the threshold question of whether plaintiff has standing (and
4 the court has jurisdiction) is distinct from the merits of his claim. Rather, the
5 jurisdictional question of standing precedes, and does not require, analysis of the merits."
6 *Maya v. Centex Corp.*, 658 F.3d 1060, 1068 (9th Cir. 2011). In the context of an alleged
7 ADA violation, a plaintiff satisfies the "injury in fact" requirement when he or she
8 encounters a barrier which violates the ADA standards, the barrier is related to the
9 plaintiff's disability, and it precludes the plaintiff from "full and equal enjoyment" of the
10 facility. *Chapman*, 631 F.3d at 947. Plaintiff sufficiently alleged these elements to
11 establish standing. (See Compl. at 3.) Accordingly, to the extent Defendant seeks
12 dismissal for lack of standing, its motion is denied.

13 **B. Failure to State a Claim**

14 Defendant further argues that Plaintiff's causes of action must be dismissed under
15 Federal Rule of Civil Procedure 12(b)(6). A motion under Rule 12(b)(6) tests the
16 sufficiency of the complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001).
17 Dismissal is warranted where the complaint lacks a cognizable legal theory. *Shroyer v.*
18 *New Cingular Wireless Serv., Inc.*, 622 F.3d 1035, 1041(9th Cir. 2010) (internal
19 quotation marks and citation omitted). Alternatively, a complaint may be dismissed
20 where it presents a cognizable legal theory, yet fails to plead essential facts under that
21 theory. *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 534 (9th Cir. 1984). The
22 Court must assume the truth of all factual allegations in the complaint and "construe them
23 in the light most favorable to [the nonmoving party]." *Gompper v. VISX, Inc.*, 298 F.3d
24 893, 895 (9th Cir. 2002). On the other hand, legal conclusions, even if cast in the form of
25 factual allegations, "are not entitled to the assumption of truth." *Ashcroft v. Iqbal*, 556
26 U.S. 662, 664 (2009).

27 Defendant argues that Plaintiff did not allege sufficient facts in support of his
28 claims. In federal court, the required specificity of factual allegations is defined by the

1 notice pleading standard of Federal Rule of Civil Procedure 8(a)(2).¹ It "requires only a
2 short and plain statement of the claim showing that the pleader is entitled to relief, in
3 order to give the defendant fair notice of what the claim is and the grounds upon which it
4 rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal quotation marks,
5 ellipsis and citation omitted).

6 While a complaint attacked by a Rule 12(b)(6) motion to
7 dismiss does not need detailed factual allegations, a plaintiff's
8 obligation to provide the grounds for his entitlement to relief
9 requires more than labels and conclusions, and a formulaic
10 recitation of the elements of a cause of action will not do.
11 Factual allegations must be enough to raise a right to relief
above the speculative level on the assumption that all the
allegations in the complaint are true (even if doubtful in fact).

12 *Id.* (internal quotation marks, ellipsis and citation omitted).

13 Defendant argues that Plaintiff failed to allege "a time where [*sic*] the alleged
14 barriers did interfere with her access" and did not "explain[] when or why she visited
15 [Defendant's restaurant]." (Reply at 2 (emphasis in original).) This level of specificity is
16 not required under the notice pleading requirement of Rule 8(a)(2). Plaintiff has alleged
17 sufficient facts in support of her claims to put Defendant on notice and raise her right to
18 relief above the speculative level. (*See* Compl. at 3.) Accordingly, to the extent
19 Defendant moves to dismiss for failure to state a claim, its motion is denied.

20 **C. Supplemental Jurisdiction**

21 The Court acquired original subject matter jurisdiction over this action because
22 Plaintiff alleged a federal claim for an ADA violation. *See* 28 U.S.C. §1331. The Court
23 "has supplemental jurisdiction over all other claims that are so related to claims in the
24 action within . . . original jurisdiction that they form part of the same case or controversy
25 under Article III of the United States Constitution." *Id.* §1367(a). "A state law claim is
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28 ¹ Procedural matters in federal court are governed by federal law even with respect
to state law causes of action. *See Hanna v. Plumer*, 380 U.S. 460 (1965).

1 part of the same case or controversy when it shares a ‘common nucleus of operative fact’
2 with the federal claims and the state and federal claims would normally be tried
3 together.” *Bahrampour v. Lampert*, 356 F.3d 969, 978 (9th Cir. 2004). Defendant does
4 not contend that the state law claims do not form part of the same case or controversy, as
5 all claims are based on the same facts. The Court therefore has supplemental jurisdiction
6 over the state law claims.

7 Defendant moves the Court to exercise its discretion under §1367(c) to decline to
8 exercise supplemental jurisdiction.

9 The district courts may decline to exercise supplemental
10 jurisdiction over a claim under subsection (a) if--

11 (1) the claim raises a novel or complex issue of State law,

12 (2) the claim substantially predominates over the claim or
13 claims over which the district court has original jurisdiction,

14 (3) the district court has dismissed all claims over which it has
15 original jurisdiction, or

16 (4) in exceptional circumstances, there are other compelling
17 reasons for declining jurisdiction.

18
19 28 U.S.C. §1367(c). “[U]nless a court properly invokes a section 1367(c) category in
20 exercising its discretion to decline to entertain pendent claims, supplemental jurisdiction
21 must be asserted.” *Exec. Software N. Am., Inc. v. U.S. Dist. Ct. (Page)*, 24 F.3d 1545,
22 1556 (9th Cir. 1994) (*overruled* on other grounds by *Cal. Dept. of Water Resources v.*
23 *Powerex Corp.*, 533 F.3d 1087, 1093 (9th Cir. 2008)).

24 Defendant contends that Plaintiff's case falls within subsections (1), (2) and (4). It
25 argues that state law claims predominate because they outnumber the sole federal claim,
26 and offer damages and injunctive relief, while the federal claim provides only for
27 injunctive relief. Defendant further maintains that exceptional circumstances warrant
28 dismissal of state law claims because the recent amendments to the statutes codifying the

1 state law claims require greater specificity of pleading and erect other procedural barriers
2 to asserting disabled access claims, which are not present in federal court. Defendant
3 also claims that because Plaintiff could have brought this action in state court, but chose
4 federal court instead, she must be forum shopping.

5 First, Defendant argues that state law claims should be dismissed under section
6 1367(c)(1) because the underlying statutes were amended in 2012 to erect procedural
7 barriers to disabled access claims. Defendant does not identify any novel or complex
8 issues associated with the amendments. Because Defendant has not demonstrated a
9 factual predicate under subsection (c)(1), the Court cannot decline supplemental
10 jurisdiction on that ground. *See Exec. Software*, 24 F.3d at 1558.

11 Next, Defendant points to subsection (c)(2), arguing that because state law claims
12 outnumber the federal claim and provide more extensive relief, they substantially
13 predominate. Even if the Court were to conclude that Defendant established a factual
14 predicate under subsection (c)(2), the Court would also have to conclude that declining
15 jurisdiction "comports with the underlying objective of most sensibly accommodating the
16 values of economy, convenience, fairness, and comity." *Exec. Software*, 24 F.3d at 1557;
17 *see also Acri v. Varian Assoc., Inc.*, 114 F.3d 999, 1001 (9th Cir. 1997) (*en banc*)
18 ("While discretion to decline to exercise supplemental jurisdiction over state law claims
19 is triggered by the presence of one of the conditions in §1367(c), it is informed by the
20 *Gibbs* values of economy, convenience, fairness, and comity.") (referring to *United Mine*
21 *Workers v. Gibbs*, 383 U.S. 715 (1966); internal quotation marks and citations omitted).
22 Defendant requests dismissal of state law claims so that they could be refiled in state
23 court, while the nearly identical ADA claim would continue to proceed in this Court.
24 This outcome would serve neither economy, convenience, nor fairness. It also would not
25 serve the interests of comity, as both the Unruh Act and CDPA incorporate ADA
26 violations. *See* Cal. Civ. Code §51(f) (Unruh Act); *id.* §54.1(d) (CDPA).

27 Finally, Defendant argues under the catchall subsection (c)(4) that Plaintiff is
28 forum shopping to avoid the procedural hurdles under state law, and that this creates

1 "exceptional circumstances" and "compelling reasons for declining jurisdiction." 28
2 U.S.C. §1367(c)(4). "Declining jurisdiction outside the subsection (c)(1) - (3) should be
3 the exception, rather than the rule." *Exec. Software*, 24 F.3d at 1558. This would occur
4 "only if the circumstances are quite unusual." *Id.* That procedure in state court differs
5 from procedure in federal court, and that the plaintiff may select the forum based on her
6 preference is not an unusual circumstance. It has long been decided that federal
7 procedural rules govern in federal court regardless of their effect on state substantive
8 rights. *See Shady Grove Orthopedic Assoc., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 409-
9 10 (2010) (discussing *Hanna v. Plumer*, 380 U.S. 460 (1965), among other authorities).
10 Furthermore, the plaintiff is "the master of the claim," and by pleading can either subject
11 him- or herself to, or avoid, federal jurisdiction. *See, e.g., Caterpillar, Inc. v. Williams*,
12 482 U.S. 386, 392 (1987); *see also* cases cited therein. Even if the Court were to
13 conclude that this case presents exceptional circumstances and compelling reasons, it
14 would also have to conclude that dismissal would best "accommodate the values of
15 economy, convenience, fairness, and comity." *Exec. Software*, 24 F.3d at 1557 (quoting
16 *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 351 (1988)); *see also Exec. Software*, 24
17 F.3d at 1558. For the reasons stated above, dismissing state law claims would not
18 accommodate any of those values.

19 For the foregoing reasons, Defendants' motion to dismiss is denied.
20

21 **IT IS SO ORDERED.**

22 Dated: March 27, 2018

23 
24 Hon. M. James Lorenz
25 United States District Judge
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