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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CHRIS LANGER,
Plaintiff,
v.
JOAN MANUELE, an individual and
representative capacity as successor
trustee of the bypass trust created by the
Manuele Family Trust dated November
16, 1995,
Defendant.

Case No.: 18-CV-00104-BEN-NLS
**ORDER GRANTING MOTION TO
DISMISS**

This matter is before the Court on Defendant’s motion to dismiss the complaint for lack of subject matter jurisdiction on the grounds of mootness. The motion has been fully briefed. For the reasons that follow, the motion is **GRANTED**.

I. Allegations in the Complaint

Plaintiff is a paraplegic who uses a wheelchair for mobility and a specially equipped van with a ramp that deploys from the passenger side for his wheelchair. In October 2017, he went to E&M Auto Parts in El Cajon, California to purchase a battery charger. Upon arrival at E&M, Plaintiff discovered that there were no van accessible parking spaces marked and reserved for persons with disabilities. The only parking space

1 marked and reserved for persons with disabilities was of insufficient dimensions for van
2 accessibility, the markings for the space had faded, and it lacked required signage for
3 disabled parking spaces. In addition, a storage box partially blocked the space. As a
4 result of this lack of adequate parking for disabled persons, Plaintiff had to shop
5 elsewhere.

6 Based on this lack of parking, Plaintiff initiated the instant action with a complaint
7 asserting claims for violation of the Americans with Disabilities Act of 1990 (the
8 “ADA”), 42 U.S.C. § 12101 et seq., and California’s Unruh Civil Rights Act. The
9 complaint seeks injunctive relief in the form of a compliant van accessible parking space
10 for disabled persons. Defendant moves to dismiss the complaint on the grounds that the
11 ADA claim, pursuant to which Plaintiff is only entitled to injunctive relief, is moot
12 because E&M now has a compliant van accessible parking space for disabled persons,
13 depriving the Court of subject matter jurisdiction.

14 **II. Legal Standard**

15 Defendant moves to dismiss for lack of subject matter jurisdiction pursuant to
16 Federal Rule of Civil Procedure 12(b)(1). “A Rule 12(b)(1) jurisdictional attack may be
17 facial or factual. In a facial attack, the challenger asserts that the allegations contained in
18 a complaint are insufficient on their face to invoke federal jurisdiction. By contrast, in a
19 factual attack, the challenger disputes the truth of the allegations that, by themselves,
20 would otherwise invoke federal jurisdiction.” *Safe Air for Everyone v. Meyer*, 373 F.3d
21 1035, 1039 (9th Cir. 2004) (citation omitted). The moving party may “convert[] the
22 motion to dismiss into a factual motion by presenting affidavits or other evidence
23 properly brought before the court[.]” *Savage v. Glendale Union High Sch., Dist. No. 205*,
24 343 F.3d 1036, 1039 n.2 (9th Cir. 2003).

25 Here, the motion to dismiss includes declarations supporting Defendant’s assertion
26 that E&M now has a compliant van accessible parking space, making this a factual attack
27 on jurisdiction. A district court deciding a factual attack on jurisdiction “need not
28 presume the truthfulness of the plaintiffs’ allegations” and may “look beyond the

1 complaint . . . without having to convert the motion into one for summary judgment.”
2 *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000); *see also Thornhill Pub. Co. v. Gen.*
3 *Tel. & Elec. Corp.*, 594 F.2d 730, 733 (9th Cir. 1979) (“Where the jurisdictional issue is
4 separable from the merits of the case, the judge may consider the evidence presented with
5 respect to the jurisdictional issue and rule on that issue, resolving factual disputes if
6 necessary.”).

7 “Once the moving party has converted the [Rule 12(b)(1)] motion to dismiss into a
8 factual motion by presenting affidavits or other evidence properly brought before the
9 court, the party opposing the motion must furnish affidavits or other evidence necessary
10 to satisfy its burden of establishing subject matter jurisdiction.” *Savage*, 343 F.3d at
11 1039 n.2. However, when “the jurisdictional issue and substantive claims are so
12 intertwined that resolution of the jurisdictional question is dependent on factual issues
13 going to the merits, the district court should employ the standard applicable to a motion
14 for summary judgment and grant the motion to dismiss for lack of jurisdiction only if the
15 material jurisdictional facts are not in dispute and the moving party is entitled to prevail
16 as a matter of law.” *Rosales v. United States*, 824 F.2d 799, 803 (9th Cir. 1987).

17 **III. Discussion**

18 The complaint alleges federal question subject matter jurisdiction under 28 U.S.C.
19 § 1331 based on the ADA claim, and supplemental jurisdiction over the Unruh Act claim.
20 Defendant argues that the Court lacks subject matter jurisdiction over the ADA claim
21 because it is moot and therefore lacks supplemental jurisdiction over the Unruh Act claim
22 as well.

23 “Because a private plaintiff can sue only for injunctive relief (*i.e.*, for removal of
24 the barrier) under the ADA, a defendant’s voluntary removal of alleged barriers prior to
25 trial can have the effect of mooting a plaintiff’s ADA claim.” *Oliver v. Ralphs Grocery*
26 *Co.*, 654 F.3d 903, 905 (9th Cir. 2011) (internal citation omitted). However, “a defendant
27 claiming that its voluntary compliance moots a case bears the formidable burden of
28 showing that it is absolutely clear the allegedly wrongful behavior could not reasonably

1 be expected to recur.” *Friends of the Earth, Inc. v. Laidlaw Env'tl. Servs. (TOC), Inc.*,
2 528 U.S. 167, 174, 190 (2000). Defendant has satisfied that burden here.

3 The ADA claim is based on an alleged lack of compliant disabled parking and
4 seeks an injunction requiring Defendant to install compliant parking. With its motion,
5 Defendant included a declaration from a representative of the owner stating that the
6 disabled parking space at E&M was restriped and repainted and new signage was
7 installed on January 25, 2018. [Doc. No. 4-2 at ¶ 8.] Further, Defendant used a fork lift
8 to move the storage box that the complaint alleged was partially blocking the space when
9 Plaintiff visited the premises in October 2017 so that the box does not obstruct the
10 parking space. [*Id.* at ¶ 9.] Defendant’s agent also declared that the box is in a better
11 place for its designated purpose and will not be moved again. [*Id.* at ¶ 10.]

12 Defendant also included a declaration from Neal Casper, a Certified Access
13 Specialist licensed by the state of California declaring that he inspected the premises of
14 E&M on January 26, 2018 and February 1, 2018 and found that the ADA violations
15 alleged in the complaint no longer exist. [Doc. No. 4-3 at ¶¶ 5-7.] Specifically, Casper
16 stated that “[t]he painting, striping, and signage for the van accessible disabled parking
17 space and access aisle . . . meets the requirements under the ADA and the California
18 Building Code including California Building Code section 11B-502.” [*Id.* at ¶ 7a.] The
19 declaration goes into detail as to how the parking space is compliant and includes thirty
20 photographs of the parking space taken on February 1, 2018, some of which contain a
21 tape measure demonstrating the dimensions of the space and access aisle. [*Id.* Ex. 2.]
22 Casper also noted that there was no storage box or drop box obstructing the aisle at the
23 time of his inspection. [*Id.* at ¶ 8.]

24 In his opposition brief, Plaintiff offers no evidence of his own as to the ADA
25 compliance (or lack thereof) of the parking at E&M as of February 1, 2018. Nor does he
26 argue that Casper’s conclusions that the parking space now complies with ADA
27 requirements are incorrect. Thus, the undisputed evidence before the Court is that the
28 obstacle to access alleged in the complaint has been remedied by Defendant, making his

1 ADA claim moot. None of Plaintiff's arguments to the contrary warrant a different
2 result.

3 First, Plaintiff argues that the jurisdictional issue is so entangled with the merits of
4 his ADA claim that it should not be resolved on a motion to dismiss. There is no such
5 entanglement. The merits of Plaintiff's ADA claim relate to the parking situation at
6 E&M when Plaintiff visited the premises in October 2017. The jurisdictional issue, on
7 the other hand, relates to the parking situation at E&M now. Whether the parking
8 situation at E&M violated the ADA in October 2017 has no bearing on whether the
9 parking situation at E&M complies with the ADA now. Thus, the Court may properly
10 consider Defendant's evidence that E&M now has ADA compliant disabled parking, and
11 by failing to offer contrary evidence, Plaintiff has not satisfied his burden of
12 demonstrating continuing subject matter jurisdiction. *Savage*, 343 F.3d at 1039 n.2.

13 Second, Plaintiff argues that his claim is not moot because Defendant could
14 subsequently pave over the disabled parking space or not re-paint it in the future if the
15 stripes fade. Likewise, according to Plaintiff, Defendant could move the storage box
16 back into the space creating the same instruction Plaintiff encountered when he visited in
17 October 2017. The Court is not persuaded by Plaintiff's speculation. This case is not
18 like cases cited by Plaintiff where the injunctive relief sought by the Plaintiff concerned
19 voluntary changes to the Defendant's behavior, as opposed to structural changes made to
20 a premises. Plaintiff does not dispute that Defendant remedied the barriers to access
21 alleged in the complaint. That Defendant could take affirmative action to undo its efforts
22 to create a compliant parking space or that the space could fall into disrepair making it no
23 longer compliant at some point in the future do not render Plaintiff's ADA claim any less
24 moot today. If Plaintiff's arguments were enough to overcome a claim of mootness, no
25 ADA claim would ever be moot because it is always possible that a defendant could
26 affirmatively undo whatever measures it took to moot the claim in the first place.

27 Third, Plaintiff argues that he is entitled to take discovery about any other possible
28 barriers to access. To take discovery about other possible barriers a Plaintiff must first

1 establish that subject matter jurisdiction exists for a claim relating to a barrier that
2 Plaintiff actually encountered. Here, because Plaintiff’s claim as to the only barrier he
3 encountered is moot, the Court lacks subject matter jurisdiction over his ADA claim, so
4 Plaintiff is not entitled to any such discovery.

5 Finally, Plaintiff also argues that the motion to dismiss be denied until he has an
6 opportunity to inspect the parking situation at E&M to test Defendant’s claims that it is
7 now ADA compliant. Yet, Plaintiff fails to identify any reasons why he could not have
8 conducted such an inspection after receipt of the motion to dismiss during the month
9 before he filed his opposition brief. Based on the photographs included with the motion,
10 it appears that E&M’s parking lot is in front of the store and accessible from the street
11 without any gate, so Plaintiff has access to the lot. Moreover, Plaintiff does not even
12 identify any information or details that are missing from Casper’s declaration. These are
13 not grounds for denying the motion.

14 **IV. Disposition**

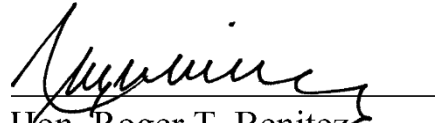
15 Plaintiff sole grounds for federal jurisdiction is an ADA claim seeking an
16 injunction requiring Defendant to install an ADA compliant van accessible parking space
17 for disabled persons. The undisputed evidence demonstrates that Defendant has installed
18 such a parking space. Accordingly, Plaintiff’s ADA claim is moot and must be dismissed
19 for lack of subject matter jurisdiction.

20 Having dismissed the ADA claim, the Court declines to exercise supplemental
21 jurisdiction over the remaining state law claim. *See Carnegie-Mellon Univ. v. Cohill*,
22 484 U.S. 343, 350 (1988) (citations omitted) (“When the balance of . . . factors indicates
23 that a case properly belongs in state court, as when the federal-law claims have dropped
24 out of the lawsuit in its early stages and only state-law claims remain, the federal court
25 should decline the exercise of jurisdiction by dismissing the case without prejudice.”);
26 *Zochlinski v. Regents of Univ. of California*, 538 F. Appx. 783, 784 (9th Cir. 2013) (“The
27 district court properly declined to exercise supplemental jurisdiction over Zochlinski’s
28 state law claims after dismissing his federal claims.”).

1 In light of the foregoing, the motion to dismiss is **GRANTED**, and the complaint
2 is **DISMISSED**.

3 **IT IS SO ORDERED.**

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5 Dated: June 18, 2018

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7 Hon. Roger T. Benitez
8 United States District Judge
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