

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

JAIME REYES,

Plaintiff,

v.

SNOOZETOWN, LLC doing business as
SNOOZE AN A.M. EATERY also known
as SNOOZE DEL MAR; DEL MAR
HIGHLANDS TOWN CENTER
ASSOCIATES II, LLC; and DOES 1-10,
Inclusive,

Defendants.

Case No.: 3:18-cv-00498-H-JLB

**ORDER GRANTING DEFENDANTS’
MOTION TO DISMISS STATE-LAW
CLAIMS IN FIRST AMENDED
COMPLAINT**

[Doc. No. 14]

On May 16, 2018, Plaintiff Jaime Reyes (“Plaintiff”), represented by counsel, filed a First Amended Complaint (“FAC”) against Defendant Snoozetown, LLC doing business as Snooze an A.M. Eatery also known as Snooze Del Mar and Defendant Del Mar Highlands Town Center Associates II, LLC (collectively, “Defendants”), alleging violations of the Americans with Disabilities Act and California state law, specifically, negligence and negligence per se. (Doc. No. 11.) On May 29, 2018, Defendants filed a motion to dismiss the FAC, arguing that the Court should decline to exercise supplemental jurisdiction over Plaintiff’s state-law claims. (Doc. No. 14 at 5-7.) On June 11, 2018, Plaintiff opposed the motion to dismiss. (Doc. No. 15.) On July 5, 2018, Defendants

1 replied. (Doc. No. 17.) For the reasons discussed below, the Court grants Defendants’
2 motion to dismiss.

3 **BACKGROUND**¹

4 Plaintiff is mobility impaired and uses a wheelchair, which he requires to gain access
5 to public establishments. (Doc. No. 11 ¶ 9.) On or about July 26, 2017, Plaintiff visited
6 Snooze An A.M. Eatery (“Snooze”), a restaurant facility open to the public. (Id. ¶ 10.)
7 Defendants are, and at all times were, the owner/operator, lessee or lessor of Snooze. (Id.
8 ¶ 5.) Plaintiff alleges that he was denied full and equal access to Snooze because the
9 property is inaccessible to individuals who use wheelchairs for mobility. (See id. ¶ 10.)

10 On March 7, 2018, Plaintiff filed suit against Defendants asserting causes of action
11 for (1) violation of the Americans with Disabilities Act (the “ADA”), 42 U.S.C. § 12101
12 *et seq.*; (2) violation of the California Unruh Civil Rights Act (the “Unruh Act”), Cal. Civil
13 Code §§ 51 and 54, *et seq.*; (3) negligence per se; and (4) negligence. Plaintiff sought
14 injunctive relief compelling Defendants to comply with the ADA and the Unruh Act;
15 declaratory relief; damages; and reasonable attorneys’ fees and costs (Doc. No. 1.) Also on
16 March 7, 2018, Plaintiff filed a motion for leave to proceed IFP, which the Court granted
17 on March 12, 2018. (Doc. Nos. 2, 4.).

18 On May 3, 2018, Defendants filed a motion to dismiss Plaintiff’s complaint. (Doc.
19 No. 7.) Rather than oppose Defendants’ motion, Plaintiff filed his First Amended
20 Complaint on May 16, 2018. (Doc. No. 11.) See Fed. R. Civ. P. 15(a)(1)(B) (permitting
21 plaintiffs to file an amended complaint as a matter of right within “21 days after the service
22 of a motion under Rule 12(b)”). Because Plaintiff’s FAC superseded his original complaint,
23 the Court denied as moot Defendants’ motion to dismiss the original complaint. (Doc. No.
24 13 (citing Ramirez v. County of San Bernardino, 806 F.3d 1002, 1008 (9th Cir. 2015)).)

25
26
27 ¹ The following factual allegations are drawn from the FAC and filings in this matter. Reviewing
28 Defendants’ motion to dismiss, the Court accepts as true all facts alleged in the FAC and construes them
in the light most favorable to Plaintiff. See Snyder & Assocs. Acquisitions LLC v. United States, 859
F.3d 1152, 1156-57 (9th Cir. 2017).

1 Unlike the original complaint, the FAC does not allege a violation of the Unruh Act; rather,
2 it alleges a total of three claims, specifically for (1) violation of the ADA, (2) negligence
3 per se, and (3) negligence. (Doc. No. 11.) Plaintiff seeks injunctive relief compelling
4 Defendants to comply with the ADA; declaratory relief; and reasonable attorneys' fees and
5 costs. (Id.)

6 On May 29, 2018, Defendants filed a motion to dismiss the FAC, arguing that the
7 Court should decline to exercise supplemental jurisdiction over Plaintiff's state-law claims
8 because they substantially predominate over his federal, ADA claim, and because Plaintiff
9 is a "high-frequency litigant" allegedly trying to avoid California's heightened pleading
10 requirements.² (Doc. No. 14 at 5-7.) On June 11, 2018, Plaintiff opposed the motion to
11 dismiss. (Doc. No. 15.) On July 5, 2018, Defendants replied. (Doc. No. 17.)

12 //

13 //

14 //

15 //

16 //

17 //

18 //

19

20
21 ² California imposes heightened pleading requirements for disability-discrimination lawsuits brought by
22 "high-frequency litigants," defined as, inter alia, "[a] plaintiff who has filed 10 or more complaints
23 alleging a construction-related accessibility violation within the 12-month period immediately preceding
24 the filing of the current complaint alleging a construction-related accessibility violation." See Cal. Civ.
25 Proc. Code §§ 425.50(a)(4)(A), 425.55(b)(1). "Construction-related accessibility claim," in turn, "means
26 any civil claim in a civil action with respect to a place of public accommodation," including claims
27 brought under the Unruh Act, the California Disabled Persons Act, and the federal ADA. See id. §
28 55.52(a)(1), (6). Plaintiff does not dispute that he has filed approximately one-hundred lawsuits in San
Diego Superior Court between 2013 and 2018, and has filed approximately fourteen lawsuits in that
court during the one-year time period immediately preceding the filing of the instant lawsuit. (Doc. Nos.
14-1 at 3, 14-2 ¶ 2; see Doc. No. 15 at 7.) The Court notes that Plaintiff currently has three other ADA
lawsuits pending before the Southern District of California. See Reyes v. Le Parfait Group LLC, 18-CV-
1290-BTM-NLS (filed on June 14, 2018); Reyes v. Webhurst LLC, 18-CV-569-BAS-JMA (filed on
March 19, 2018); Reyes v. Marwaha, 18-CV-00477-L-BLM (filed on March 5, 2018).

1 **DISCUSSION**

2 **I. Legal Standards for Federal Supplemental Jurisdiction**

3 The federal supplemental jurisdiction statute, 28 U.S.C. § 1367(a), 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 Unless prohibited by § 1367(b), or unless one of the exceptions to supplemental
9 jurisdiction under § 1367(c) applies, supplemental jurisdiction is mandatory. Schutz v.
10 Cuddeback, 262 F. Supp. 3d 1025, 1031 (S.D. Cal. 2017). Under § 1367(c), a district court
11 has discretion to decline supplemental jurisdiction over a state-law claim if:

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

18 The Court’s exercise of this discretion is informed by “values of economy,
19 convenience, fairness, and comity.” Acri v. Varian Assocs., Inc., 114 F.3d 999, 1001 (9th
20 Cir. 1997) (en banc).

21 When a court declines supplemental jurisdiction over a state-law claim pursuant to
22 one of §1367(c)’s first three provisions, the court does not have to state its reasons for
23 dismissal of the claim. San Petro Hotel Co. v. City of Los Angeles, 159 F.3d 470, 478 (9th
24 Cir. 1988). But if the court’s decision to decline supplemental jurisdiction is based on the
25 fourth provision—“exceptional circumstances”—then the court “must articulate why the
26 circumstances of the case are exceptional in addition to inquiring whether the balance of
27 [economy, convenience, fairness, and comity] provide compelling reasons for declining
28 jurisdiction in such circumstances.” Exec. Software N. Am., Inc. v. U.S. Dist. Court, 24

1 F.3d 1545, 1558 (9th Cir. 1994), overruled on other grounds by Cal. Dep't of Water Res.
2 v. Powerex Corp., 533 F.3d 1087 (9th Cir. 2008).

3 **II. Analysis**

4 Having carefully considered the parties' arguments and the record, the Court
5 declines to exercise supplemental jurisdiction over Plaintiff's negligence claims because
6 they substantially predominate over his ADA claim. See 28 U.S.C. § 1367(c)(2). Plaintiff's
7 negligence claims are of a very different scope and nature than his ADA claim and also
8 provide more expansive remedies than Plaintiff's ADA claim. Damages, for example, are
9 unavailable under the ADA, see Wander v. Kaus, 304 F.3d 856, 858 (9th Cir. 2002), but
10 are an element of any negligence claim, see In re Sony Gaming Networks, 903 F. Supp. 2d
11 942, 959-60 (S.D. Cal. 2012).³ Accordingly, the Court exercises its sound discretion to
12 decline supplemental jurisdiction over Plaintiff's state-law claims. See United Mine
13 Workers of Am. v. Gibbs, 383 U.S. 715, 726-27 (1966) (“[I]f it appears that the state issues
14 substantially predominate, whether in terms of proof, of the scope of the issues raised, or
15 of the comprehensiveness of the remedy sought, the state claims may be dismissed without
16 prejudice and left for resolution to state tribunals.”).

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26

27

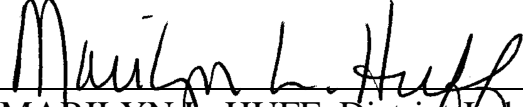
28 ³ The Court notes that it is unclear how Plaintiff could prevail on his negligence claims given his
statement that he “is not requesting damages for negligence or negligence per se.” (Doc. No. 15 at 9.)

1 **CONCLUSION**

2 For the reasons discussed above, the Court **GRANTS** Defendants' motion to dismiss
3 Plaintiff's state-law claims for negligence and **DECLINES** to exercise supplemental
4 jurisdiction over those claims. Accordingly, the Court **DISMISSES WITHOUT**
5 **PREJUDICE** Plaintiff's negligence claims. (Doc. No. 14.) Plaintiff's ADA claim may
6 proceed before the Court at this time.

7 **IT IS SO ORDERED.**

8 DATED: July 16, 2018

9 
10 MARILYN L. HUFF, District Judge
11 UNITED STATES DISTRICT COURT
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28