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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

CHRIS LANGER,  
  
Plaintiff,  
  
v.  
  
LAPIZ PROPERTIES GROUP, a  
California Limited Partnership; and  
YQUEM EQUITY CORPORATION, a  
California Corporation,  
  
Defendants.

Case No.: 3:20-cv-0664-BEN-MDD

**ORDER GRANTING IN PART  
DEFENDANTS’ MOTIONS TO  
DISMISS AND DENYING  
PLAINTIFF’S MOTION TO  
EXTEND TIME FOR SERVICE**

**[ECF Nos. 4, 5, and 10]**

This matter comes before the Court on three motions. First, Defendant Yquem Equity Corporation (“Yquem”) filed a Motion to Dismiss. ECF No. 4. Second, Plaintiff Chris Langer filed a Motion to Extend Time for Service of Process. ECF No. 5. Finally, Defendant Lapid Properties Group (“Lapid”) filed a Motion to Dismiss. ECF No. 10. For the following reasons, the Court grants Defendants’ Motions to Dismiss in part and denies Plaintiff’s Motion to Extend Time for Service.

**I. Background**

On May 29, 2013, Plaintiff Chris Langer filed a complaint against, among others, Defendants Yquem and Lapid in San Diego County Superior Court. 2013 Compl., ECF No. 4-2, Ex. A. He alleged violations of the Unruh Civil Rights Act and the California Disabled Persons Act. Id. at ¶¶ 10-18. That complaint alleged that on October 12, 2012,

1 he went to a store at a property owned by Defendants in San Diego, California, to shop,  
2 and that while Defendants offered a parking lot to customers at the store, the parking was  
3 not handicap-accessible. *Id.* at ¶¶ 4-7. On July 26, 2013, Langer voluntarily dismissed  
4 that complaint with prejudice. *Req. for Dismissal*, ECF No. 4-2, Ex. B.

5 On April 4, 2020, Langer filed the instant case against Defendants Yquem and  
6 Lapid alleging violations of the Americans with Disabilities Act (“ADA”) and Unruh  
7 Civil Rights Act. *Compl.*, ECF No. 1, ¶¶ 20-32. The allegations again state that  
8 Defendants failed to provide accessible parking at the same store. *Id.* at ¶¶ 10-11. In  
9 contrast to earlier complaint, Langer alleges he would return to the store if the parking lot  
10 was accessible. *Id.* at ¶ 18.

11 Defendants have filed two motions to dismiss. Defendant Lapid argues that it was  
12 not properly served with process. Defendant Yquem argues that the Complaint is barred  
13 by *res judicata* and collateral estoppel.

## 14 **II. Legal Standards**

### 15 **A. Rule 12(b)(5) Motion to Dismiss**

16 Federal Rule of Civil Procedure 12(b)(5) allows a court to dismiss an action for  
17 insufficient service of process. Local Civil Rule 4.1(a) provides “[a]ll complaints must  
18 be served within ninety (90) days. Any extension will be granted only upon good cause  
19 shown.” Dismissals for failure to timely serve process are generally without prejudice.  
20 *Fed. R. Civ. P. 4(m)*.

### 21 **B. Rule 12(b)(6) Motion to Dismiss**

22 Under Federal Rule of Civil Procedure 12(b)(6), a court may dismiss a complaint  
23 if, taking all factual allegations as true, the complaint fails to state a plausible claim for  
24 relief on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v.*  
25 *Twombly*, 550 U.S. 544, 556-57 (2007). Dismissal is appropriate if the complaint fails to  
26 state enough facts to raise a reasonable expectation that discovery will reveal evidence of  
27 the matter complained of, or if the complaint lacks a cognizable legal theory under which  
28 relief may be granted. *Twombly*, 550 U.S. at 556.

1 In reviewing the plausibility of a complaint, courts “accept factual allegations in  
2 the complaint as true and construe the pleadings in the light most favorable to the  
3 nonmoving party.” *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031  
4 (9th Cir. 2008). Nonetheless, courts do not “accept as true allegations that are merely  
5 conclusory, unwarranted deductions of fact, or unreasonable inferences.” *In re Gilead*  
6 *Scis. Secs. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008).

### 7 **C. Request for Judicial Notice**

8 “As a general rule, ‘a district court may not consider any material beyond the  
9 pleadings in ruling on a Rule 12(b)(6) motion.’” *Lee v. City of L.A.*, 250 F.3d 668, 688  
10 (9th Cir. 2001) (quoting *Branch v. Tunnell*, 14 F.3d 449, 453 (9th Cir. 1994)). However,  
11 Federal Rule of Evidence 201 authorizes a court to take judicial notice of facts “not  
12 subject to reasonable dispute because [they] . . . can be accurately and readily determined  
13 from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b).  
14 Applying Rule 201, “a court may take judicial notice of ‘matters of public record.’” *Lee*,  
15 250 F.3d at 689 (quoting *Mack v. South Bay Beer Distrib.*, 798 F.2d 1279, 1282 (9th Cir.  
16 1986)). Courts may take judicial notice of “proceedings in other courts, both within and  
17 without the federal judicial system, if those proceedings have a direct relation to matters  
18 at issue.” *U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244,  
19 248 (9th Cir. 1992) (citation and internal quotations omitted).

20 Here, Defendants request the Court take judicial notice of the complaint and  
21 request for dismissal in the 2013 action. Request for Judicial Notice, ECF No. 4-2, Exs.  
22 A and B. Langer does not oppose. The Court has reviewed the request and finds judicial  
23 notice of the complaint and request for dismissal appropriate and will consider those  
24 exhibits in its analysis below.

### 25 **III. Discussion**

26 Defendant Lapid argues the claims against it should be dismissed for improper  
27 service of process. Mot., ECF No. 10, 7. Both Defendants further argue Langer’s  
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1 Complaint should be dismissed because it is barred on res judicata and collateral  
2 estoppel grounds.

3 **A. Dismissal of Defendant Lapiz for Lack of Timely Service**

4 Defendant Lapiz argues the claims against it should be dismissed because it was  
5 not served with the Summons and Complaint until July 30, 2020, which was 115 days  
6 after the Summons was issued. See Docket; Mot., ECF No. 10, 7. The Court notes that  
7 Langer filed a Motion to Extend Time for Service with respect to Defendant Lapiz on  
8 July 10, 2020. ECF No. 5. Langer argued the COVID-19 pandemic made service of  
9 process more difficult. Id. at 2. Under the circumstances, the Court would be inclined to  
10 grant this request. However, Langer filed his motion for extension 93 days after the  
11 Summons was issued, after the time for service had already expired. See Civ. L. R.  
12 4.1(a). While Langer provided good cause in his motion for why service could not be  
13 completed, he failed to provide any justification for why his motion was not timely.  
14 Without any showing of good cause for this delay in filing the Motion to Extend Time for  
15 Service, the Court denies it. Accordingly, the Court dismisses Defendant Lapiz without  
16 prejudice in accordance with Federal Rule of Civil Procedure 4(m).

17 **B. Dismissal Pursuant to Rule 12(b)(6)**

18 The Court next turns to Defendant Yquem's Motion to Dismiss, which argues  
19 Langer's claims are barred on res judicata and collateral estoppel grounds. Mot., ECF  
20 No. 4-1, 2. Langer argues these doctrines do not apply to the claims at issue. Opp'n,  
21 ECF No. 6, 1. Defendant Yquem's argument is based on the 2013 action, discussed  
22 above, filed and dismissed with prejudice in San Diego County Superior Court. Mot.,  
23 ECF No. 4-1, 2.

24 When the prior judgment is a state court judgment, federal courts apply the res  
25 judicata and collateral estoppel rules of the state where the judgment was rendered. See  
26 Brodheim v. Cry, 584 F.3d 1262, 1268 (9th Cir. 2009) (citing Migra v. Warren City  
27 School Dist. Bd. Of Ed, 465 U.S. 75, 81 (1984)). In California, "[r]es judicata, or claim  
28 preclusion, prevents relitigation of the same cause of action in a second suit between the

1 same parties or parties in privity with them.” *Mycogen Corp. v. Monsanto Co.*, 28 Cal.  
2 4th 888, 896 (2002) (internal quotations omitted). “Under this doctrine, all claims based  
3 on the same cause of action must be decided in a single suit; if not brought initially, they  
4 may not be raised at a later date.” *Id.* Collateral estoppel, or issue preclusion, “precludes  
5 relitigation of issues argued and decided in prior proceedings.” *Id.*

6 “The prerequisite elements for applying [res judicata] to either an entire cause of  
7 action or one or more issues are the same: (1) A claim or issue raised in the present action  
8 is identical to a claim or issue litigated in a prior proceeding; (2) the prior proceeding  
9 resulted in a final judgment on the merits; and (3) the party against whom the doctrine is  
10 being asserted was a party or in privity with a party to the prior proceeding.” *People v.*  
11 *Barragan*, 32 Cal. 4th 236, 253 (2004) (citing *Brinton v. Bankers Pension Services, Inc.*,  
12 76 Cal.App.4th 550, 556 (1999)).

13 Here, the 2013 action, which Langer dismissed with prejudice, involved three  
14 causes of action for violation of the Unruh Civil Rights Act, the California Disabled  
15 Persons Act, and negligence. 2013 Compl., ECF No. 4-2, Ex. A. This suit involves  
16 claims for violation of the Americans with Disabilities Act and Unruh Civil Rights Act.  
17 Compl., ECF No. 1. In the 2013 complaint, though not bringing an ADA claim, Langer  
18 alleged these same Defendants “violated the plaintiff’s rights under the ADA.” 2013  
19 Compl., ECF No. 4-2, Ex. A ¶ 14.

### 20 **C. ADA Claim**

21 Defendant Yquem argues Langer’s ADA claim is barred by res judicata. Langer  
22 argues that res judicata should not apply because he asserts a claim for injunctive relief  
23 under the ADA that he did not seek in the previous claim, and because this claim  
24 involves facts and issues that post-date his prior claim.

25 The Complaint alleges Yquem violated the ADA because it did not provide  
26 accessible parking in a parking lot purportedly open for use by customers. Compl., ECF  
27 No. 1, ¶¶ 22-23. Langer further argues he would return to the store located on the  
28 premises if the barriers to access in the parking lot were removed. *Id.* at ¶ 18.

1 In his Opposition, Langer argues this claim is not barred by res judicata because,  
2 unlike in the 2013 action, he would return to the store at the premises if the barriers were  
3 removed. Opp'n, ECF No. 6, 2-3. Reviewing the Complaint as well as the 2013 action,  
4 the Court finds a factual difference. In the 2013 action, Langer never alleged he would  
5 return to the property if barriers were removed. Here, he does. Taking all of Langer's  
6 allegations as true, the Court concludes that res judicata cannot apply to Langer's ADA  
7 claims at this stage in the litigation.

#### 8 **D. Unruh Civil Rights Act Claim**

9 By contrast, Langer's 2013 complaint and the instant complaint both allege  
10 violations of the Unruh Civil Rights Act. Compare 2013 Compl., ECF No. 4-2, Ex. A ¶¶  
11 10-15 and Compl., ECF No. 1, ¶¶ 29-32. These claims allegedly occurred at the same  
12 property. Id. Further, they both allege Defendants failed to provide accessible parking  
13 and therefore "failed to provide full and equal access to wheelchair users such as the  
14 plaintiff." 2013 Compl., ECF No. 4-2, Ex. A ¶ 12; Compl., ECF No. 1, ¶¶ 11-13. Langer  
15 does not allege that the accessible parking is deficient in ways different than when he  
16 attempted to access the same parking lot in 2013.<sup>1</sup> Accordingly, the Court finds Langer's  
17 Unruh Civil Rights Act claim to be identical to the claim he brought against Defendants  
18 in the 2013 action.

19 The Court must then consider whether the 2013 action constitutes a final judgment  
20 on the merits. The California Supreme Court has held that "for purposes of applying the  
21 doctrine of res judicata...a dismissal with prejudice is the equivalent of a final judgment  
22 on the merits." *Boeken v. Philip Morris USA, Inc.*, 48 Cal. 4th 788, 793 (2010) (citing  
23 *Alpha Mechanical, Heating & Air Conditioning, Inc. v. Travelers Casualty & Surety Co.*  
24 *of Am.*, 133 Cal. App. 3d 813, 820-821 (Cal. Ct. App. 2005)). Here, Langer dismissed  
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28 <sup>1</sup> This Order does not address whether res judicata would apply if the alleged barriers to  
accessible parking have changed over time.

1 the 2013 with action with prejudice, so it is a final judgment on the merits for res judicata  
2 purposes.

3 Turning to the final element of the res judicata analysis, there is no dispute that the  
4 parties to the 2013 action are identical to those in the instant case.

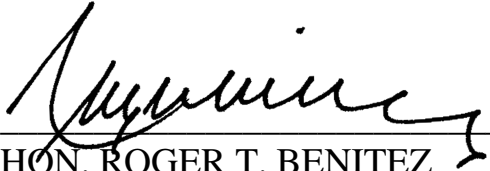
5 Accordingly, the Court finds the Unruh Civil Rights Act claim, as pled, is barred  
6 by res judicata. Langer may be able to cure this deficiency, so the proper remedy is to  
7 dismiss the Unruh Civil Rights Act claim but to provide Langer with leave to amend.

8 **IV. Conclusion**

9 For the foregoing reasons, Plaintiff's Motion to Extend Time for Service (ECF No.  
10 5) is **DENIED**. Accordingly, Defendant Lapiz Properties Group's Motion to Dismiss  
11 (ECF No. 10) is **GRANTED**. Defendant Yquem's Motion to Dismiss is **GRANTED in**  
12 **part** with respect to the Unruh Civil Rights Act claim and **DENIED in part** with respect  
13 to the ADA Claim. Plaintiff is granted leave to file a First Amended Complaint that  
14 cures the pleading deficiencies identified in this order. Plaintiff may not add new claims  
15 or parties without seeking leave of this Court pursuant to Federal Rule of Civil Procedure  
16 15. The First Amended Complaint shall be filed within 14 days of this order.

17 **IT IS SO ORDERED.**

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19 DATED: October 2, 2020

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21 HON. ROGER T. BENITEZ  
22 United States District Judge  
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