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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 VICTOR DALFIO,

12 Plaintiff,

13 v.

14 SIMCO-ROBINSON, LLC, and DOES 1-
15 10,

16 Defendant.

Case No.: 21-cv-647-MMA (DEB)

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS**

[Doc. No. 5]

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18 On April 14, 2021, Plaintiff Victor Dalfio (“Plaintiff”) filed a Complaint against
19 Simco-Robinson, LLC and Does 1 through 10 (collectively, “Defendant”) pursuant to the
20 Americans with Disabilities Act, 41 U.S.C. § 12181, *et seq.* (“ADA”) and the California
21 Unruh Civil Rights Act, Cal. Civ. Code § 51, *et seq.* (“Unruh Act”). *See* Doc. No. 1
22 (“Compl.”). Defendant moves to dismiss the Complaint for lack of jurisdiction pursuant
23 to Federal Rule of Civil Procedure 12(b)(1). *See* Doc. No. 5. Plaintiff filed an
24 opposition, to which Defendant replied. *See* Doc. Nos. 6, 7. The Court found the matter
25 suitable for disposition on the papers and without oral argument pursuant to Federal Rule
26 of Civil Procedure 78(b) and Civil Local Rule 7.1.d.1. *See* Doc. No. 8. For the reasons
27 set forth below, the Court **GRANTS** Defendant’s motion.
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1 **I. BACKGROUND**

2 Plaintiff has had two hip replacements and as a result, has difficulty walking and
3 standing, and requires a cane or walker for mobility. *See* Compl. ¶ 1. Plaintiff asserts
4 that he is a disabled person under the ADA and the Unruh Act. *See id.* According to
5 Plaintiff, Defendant owns the real property located at 680 E. San Ysidro Blvd., San
6 Ysidro, CA 92173 (the “Property”), which operates as “Burger King” (the “Business”).
7 *Id.* ¶¶ 2–3. Plaintiff states that the Property is newly constructed or otherwise underwent
8 remodeling or repairs after January 26, 1992, yet fails to comply with California access
9 standards, which were in effect at the time of construction. *See id.* ¶ 12.

10 Plaintiff alleges that he visited the Property on two separate occasions in March
11 2021 with the intent to patronize the Business. *See id.* ¶ 13. However, Plaintiff claims he
12 was unable to do so because Defendant “did not offer persons with disabilities with
13 equivalent facilities, privileges, and advantages offered by Defendant[] to other patrons.”
14 *See id.* ¶ 14. Thus, Plaintiff alleges twenty-six (26) separate violations of the ADA and
15 the California Building Code. *See id.* ¶ 20. For example, in the parking area, Plaintiff
16 draws attention to the lack of a designated disabled parking space, lack of signage, and
17 pavement distresses. *See id.*

18 **II. LEGAL STANDARD**

19 Federal Rule of Civil Procedure 12(b)(1) allows for dismissal of a complaint for
20 lack of subject matter jurisdiction. “[F]ederal courts are courts of limited jurisdiction.”
21 *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978), *superseded by statute*
22 *on other grounds*, 28 U.S.C. § 1367, *as recognized in LaSalle Nat’l Trust, NA v.*
23 *Schaffner*, 818 F. Supp. 1161, 1165 (N.D. Ill. 1993). “A federal court is presumed to lack
24 jurisdiction in a particular case unless the contrary affirmatively appears.” *Stock West,*
25 *Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1225 (9th Cir.
26 1989) (citing *Cal. ex rel. Younger v. Andrus*, 608 F.2d 1247, 1249 (9th Cir. 1979)).
27 Subject matter jurisdiction must exist when the action is commenced. *Morongo Band of*
28 *Mission Indians v. Cal. State Bd. of Equalization*, 858 F.2d 1376, 1380 (9th Cir. 1988)

1 (citing *Mollan v. Torrance*, 22 U.S. 537, 538 (1824)). Further, subject matter jurisdiction
2 may be raised “at any stage of the litigation.” *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 506
3 (2006); *see also* Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time that it lacks
4 subject-matter jurisdiction, the court must dismiss the action.”).

5 A facial attack on jurisdiction asserts that the allegations in a complaint are
6 insufficient to invoke federal jurisdiction. *See Safe Air for Everyone v. Meyer*, 373 F.3d
7 1035, 1039 (9th Cir. 2004). In resolving a facial challenge to jurisdiction, a court accepts
8 the allegations of the complaint as true and draws all reasonable inferences in favor of the
9 plaintiff. *See Doe v. Holy See*, 557 F.3d 1066, 1073 (9th Cir. 2009) (citing *Wolfe v.*
10 *Strankman*, 392 F.3d 358, 362 (9th Cir. 2004)).

11 **III. DISCUSSION**

12 Based on the twenty-six alleged accommodation deficiencies, Plaintiff brings two
13 causes of action: (1) violation of the ADA; and (2) violation of the Unruh Act. *See*
14 *Compl.* at 24–29. The parties seem to agree that the Court has original subject matter
15 jurisdiction over Plaintiff’s ADA claim pursuant to 28 U.S.C. § 1331 and 28 U.S.C.
16 § 1343. *See Compl.* ¶ 8; *Doc. No. 5-1* at 3. Moreover, under 28 U.S.C. § 1367(a), “in
17 any civil action of which the district courts have original jurisdiction, the district courts
18 shall have supplemental jurisdiction over all other claims that are so related to claims in
19 the action within such original jurisdiction.” 28 U.S.C. § 1367(a). Plaintiff alleges that
20 the Court has supplemental jurisdiction over his Unruh Act claim because it arises from
21 the same nucleus of operative facts and transactions as his ADA claim. *See Compl.* ¶ 9.

22 Defendant moves to dismiss Plaintiff’s Unruh Act claim for lack of subject matter
23 jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1). *See Doc. No. 5-1* at 3.
24 Specifically, Defendant asks the Court to decline to exercise supplemental jurisdiction
25 over Plaintiff’s Unruh Act claim under 28 U.S.C. § 1367(c). *See id.* Pursuant to 28
26 U.S.C. § 1367(c), a district court may decline to exercise supplemental jurisdiction over a
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1 state law claim if one of the following exceptions applies:

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

6 28 U.S.C. § 1367(c). Courts also consider “judicial economy, convenience and fairness
7 to litigants” when deciding whether to exercise supplemental jurisdiction. *United Mine*
8 *Workers v. Gibbs*, 383 U.S. 715, 726 (1966). “Needless decisions of state law should be
9 avoided both as a matter of comity and to promote justice between the parties.” *Id.*

10 Defendant contends there are compelling reasons to decline to exercise
11 supplemental jurisdiction. *See* Doc. No. 5-1 at 5. Defendant argues “Plaintiff is a ‘high-
12 frequency litigant’” as evidenced by the over thirty “access lawsuits” Plaintiff has filed in
13 this year alone. *See id.* at 2. Defendant also draws attention to the Court’s previous order
14 declining to exercise supplemental jurisdiction in a separate lawsuit filed by Plaintiff. *Id.*
15 at 2 (citing *Dalfio v. SECVD & I, Inc.*, No. 21-CV-929-MMA (AGS), 2021 WL 4197203
16 (S.D. Cal. Sept. 15, 2021)). Defendant suggests that Plaintiff is intentionally evading the
17 heightened pleading standards for Unruh Act claims in state court by filing his lawsuit in
18 federal district court. *See* Doc. No. 5-1 at 4. The Court agrees.

19 As the Court explained in *SECVD & I, Inc.*, the California legislature codified
20 heightened pleading requirements for Unruh Act claims, namely, mandating greater
21 pleading specificity, as well as requiring verification of the complaint. *See* Cal. Code
22 Civ. Proc. § 425.50. In 2015, California imposed further requirements on “high
23 frequency litigants,” including a one thousand dollar (\$1,000) filing fee. Cal. Gov’t Code
24 § 70616.5. These unique pleading requirements were imposed in order to “deter baseless
25 claims and vexatious litigation,” an issue of particular importance in California because
26 of the unique availability of statutory damages available under the Unruh Act. *See*
27 *Schutz v. Cuddeback*, 262 F. Supp. 3d 1025, 1031 (S.D. Cal. 2017). California has a
28 substantial interest in implementing statutory schemes aimed at deterring vexatious

1 litigation and easing the financial burden the Unruh Act imposes on California
2 businesses. *See, e.g., Whitaker v. Mac*, 411 F. Supp. 3d 1108, 1116 (C.D. Cal. 2019); *see*
3 *also Schutza*, 262 F. Supp. 3d at 1031. Recognizing this, many district courts have
4 declined to exercise supplemental jurisdiction over Unruh Act claims as a matter of
5 comity and in deference to California’s compelling state interests. *See, e.g., Schutza*, 262
6 F. Supp. 3d at 1031 (finding California’s substantial interest in discouraging unverified
7 disability discrimination claims to be a compelling reason for declining supplemental
8 jurisdiction over state claims); *see also Whitaker*, 411 F. Supp. 3d at 1116 (finding
9 California’s “desire to limit the financial burdens California’s business may face” under
10 the Unruh Act to be a compelling reason for declining supplemental jurisdiction over
11 state claims); *Marquez v. KBMS Hospitality Corporation*, 492 F. Supp. 3d 1058, 1062
12 (C.D. Cal. 2020) (declining supplemental jurisdiction over an Unruh Act claim because
13 California “deserves the opportunity to enforce” its detailed statutory scheme regarding
14 damages under the Unruh Act); *Langer v. Kiser*, 516 F. Supp. 3d 1066, 1090 (S.D. Cal.
15 2021) (finding comity to be a compelling reason for declining supplemental jurisdiction
16 over state claims). The Court finds that comity and deference to California’s interest in
17 monitoring and regulating Unruh Act complaints present compelling reasons to decline to
18 exercise supplemental jurisdiction.

19 Further, Plaintiff has both monetary and injunctive relief available to him under his
20 Unruh Act claim. Thus, “[i]t is unclear what advantage—other than avoiding state-
21 imposed pleading requirements—Plaintiff gains by being in federal court since his sole
22 remedy under the ADA is injunctive relief, which is also available under the Unruh Act.”
23 *Schutza*, 262 F. Supp. 3d at 1031; *see also Dalfio v. P.I.D. Univ., Inc.*, No. 21cv911-
24 CAB-JLB, 2021 U.S. Dist. LEXIS 91674, at *2 (S.D. Cal. May 13, 2021). Accordingly,
25 it is apparent to the Court that financial recovery is Plaintiff’s primary focus. As
26 “discouraging forum-shopping is a legitimate goal for the federal courts,” *Org. for*
27 *Advancement of Minorities with Disabilities v. Brick Oven Rest.*, 406 F. Supp. 2d 1120,
28 1131 (S.D. Cal. 2005) (citing *Hanna v. Plumer*, 380 U.S. 460, 475–77 (1965)), the Court

1 finds that it is a further compelling reason to decline the exercise of supplemental
2 jurisdiction. *See Schutza*, 262 F. Supp. 3d at 1031 (finding the court’s interest in
3 discouraging forum-shopping to be an exceptional circumstance justifying the declining
4 of supplemental jurisdiction over the Unruh Act claim); *Langer*, 516 F. Supp. 3d at 1090
5 (finding discouraging forum shopping to be a compelling interest in support of the court’s
6 decision to decline the exercise of supplemental jurisdiction over the Unruh Act claims);
7 *Marquez*, 492 F. Supp. 3d at 1063 (finding that California’s statutory reforms and
8 corresponding increase in federal filings of disability discrimination claims raises
9 compelling concerns about forum-shopping).

10 Additionally, several courts in this circuit have found that Unruh Act claims
11 substantially predominate over ADA claims where a plaintiff alleges numerous
12 violations, due to the more expansive remedies available under the Unruh Act. *See, e.g.*,
13 *Schutza*, 262 F. Supp. 3d at 1030 (finding that plaintiff’s Unruh Act claims substantially
14 predominated over ADA claims where plaintiff alleged nine violations, making available
15 \$36,000 in statutory damages); *Brick Oven Rest.*, 406 F. Supp. 2d at 1131 (finding that
16 plaintiff’s Unruh Act claims substantially predominated over ADA claims where plaintiff
17 alleged fourteen violations, making available \$56,000 in statutory damages); *Molski v.*
18 *Hitching Post I Rest., Inc.*, No. CV 04-1077 SVW (RNBx), 2005 U.S. Dist. LEXIS
19 39959, at *23 (C.D. Cal. May 24, 2005) (finding that plaintiff’s Unruh Act claims
20 substantially predominated over ADA claims where plaintiff alleged thirteen violations,
21 making available \$52,000 in statutory damages). While the Ninth Circuit has never
22 directly addressed this issue, *c.f. Armstrong v. Nan, Inc.*, 679 F. App’x 582 (9th Cir.
23 2017) (affirming a district court’s decision to decline to exercise supplemental
24 jurisdiction over a state law age discrimination claim because of “the divergence of
25 elements and remedies available under federal versus Hawaii state law”), the Court finds
26 that a damages-focused approach to determining predominance is appropriate here. The
27 only available remedy under the ADA is injunctive relief. *See* 42 U.S.C. § 12188(a)(1);
28 *see also Wander v. Kaus*, 304 F.3d 856, 858 (9th Cir. 2002) (“Damages are not

1 recoverable under Title III of the ADA - only injunctive relief is available for violations
2 of Title III.”). However, in addition to injunctive relief, the Unruh Act provides for
3 statutory damages “in no case less than four thousand dollars (\$4,000),” for each
4 violation. Cal. Civ. Code § 52. Plaintiff asserts a total of twenty-six violations. *See*
5 Compl. ¶ 20. Thus, a minimum of \$104,000 in statutory damages is available to Plaintiff
6 under state law should he prevail. The mere availability of monetary damages under the
7 Unruh Act, coupled with the magnitude of potential recovery available to Plaintiff based
8 on the number of violations he alleges, further indicates that Plaintiff’s predominant
9 focus is recovering financially under state law. Accordingly, the Court finds that
10 Plaintiff’s Unruh Act claim substantially predominates over his ADA claim due to the
11 disparity in remedies available. *See Gibbs*, 383 U.S. at 726 (explaining that state law
12 claims may “substantially predominate” over federal claims “in terms of . . . the
13 comprehensiveness of the remedy sought . . .”).

14 In opposition, Plaintiff argues the Court should not decline to exercise
15 supplemental jurisdiction because it would promote judicial economy for Plaintiff’s
16 federal ADA claim and state Unruh Act claim to be litigated in one suit. *See* Doc. No. 6
17 at 7. Plaintiff contends that “[t]wice the judicial and economic resources would have to
18 be expended to obtain the same result, and both the courts and the parties would be
19 highly inconvenienced.” *Id.* at 8. Yet, as other courts have noted, this is a problem of
20 Plaintiff’s own making: “Had [Plaintiff] brought this suit in state court, there would have
21 been only one suit pending and he would have been eligible to receive every form of
22 relief he seeks: an injunction, money damages, and attorney’s fees.” *Schutz v. Alessio*
23 *Leasing, Inc.*, No. 18CV2154-LAB (AGS), 2019 WL 1546950, at *4 (S.D. Cal. Apr. 8,
24 2019).

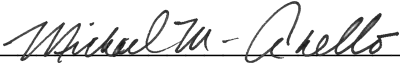
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1 **IV. CONCLUSION**

2 For the foregoing reasons, the Court **GRANTS** Defendant's motion to dismiss,
3 declines to exercise jurisdiction over Plaintiff's Unruh Act Claim pursuant to 28 U.S.C.
4 § 1367(c), and **DISMISSES** Plaintiff's second cause of action.

5 **IT IS SO ORDERED.**

6 Dated: November 8, 2021

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8 HON. MICHAEL M. ANELLO
9 United States District Judge

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