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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 CUATRO CABALLEROS LLC, and  
15 DOES 1-10,

16 Defendant.

Case No.: 21-cv-672-MMA (AGS)

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

[Doc. No. 12]

17  
18 On July 1, 2021, Plaintiff Victor Dalfio (“Plaintiff”) filed a First Amended  
19 Complaint against Cuatro Caballeros LLC and Does 1 through 10 (collectively,  
20 “Defendant”) pursuant to the Americans with Disabilities Act, 41 U.S.C. § 12181, *et seq.*  
21 (“ADA”) and the California Unruh Civil Rights Act, Cal. Civ. Code § 51, *et seq.* (“Unruh  
22 Act”). *See* Doc. No. 7 (“FAC”). Defendant moves to dismiss the FAC for lack of  
23 jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1). *See* Doc. No. 12.  
24 Plaintiff filed an opposition, to which Defendant replied. *See* Doc. Nos. 13, 14. The  
25 Court found the matter suitable for disposition on the papers and without oral argument  
26 pursuant to Federal Rule of Civil Procedure 78(b) and Civil Local Rule 7.1.d.1. *See* Doc.  
27 No. 15. For the reasons 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* FAC ¶ 1. Plaintiff also “has  
4 gout that causes acute pain in his feet.” *Id.* Plaintiff asserts that he is a disabled person  
5 under the ADA and the Unruh Act. *See id.* According to Plaintiff, Defendant owns the  
6 real property located at 510 E. San Ysidro Blvd., San Diego, CA 92173 (the “Property”),  
7 which operates as “ABC Money Exchange” (the “Business”). *Id.* ¶¶ 2–3. Plaintiff states  
8 that the Property is newly constructed or otherwise underwent remodeling or repairs after  
9 January 26, 1992, yet fails to comply with California access standards, which were in  
10 effect at the time of construction. *See id.* ¶ 12.

11 Plaintiff alleges that he visited the Property on two separate occasions in December  
12 2020 and March 2021 with the intent to patronize the Business. *See id.* ¶ 13. However,  
13 Plaintiff claims he was unable to do so because Defendant “did not offer persons with  
14 disabilities with equivalent facilities, privileges, and advantages offered by Defendant[]  
15 to other patrons.” *See id.* ¶ 14. Thus, Plaintiff alleges fifteen (15) separate violations of  
16 the ADA and the California Building Code. *See id.* ¶ 20. For example, in the parking  
17 area, Plaintiff draws attention to the lack of designated disabled parking spaces, lack of  
18 signage, and pavement distresses. *See id.*

19 **II. LEGAL STANDARD**

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

1 *Mission Indians v. Cal. State Bd. of Equalization*, 858 F.2d 1376, 1380 (9th Cir. 1988)  
2 (citing *Mollan v. Torrance*, 22 U.S. 537, 538 (1824)). Further, subject matter jurisdiction  
3 may be raised “at any stage of the litigation.” *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 506  
4 (2006); *see also* Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time that it lacks  
5 subject-matter jurisdiction, the court must dismiss the action.”).

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

### 12 **III. DISCUSSION**

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

23 Defendant moves to dismiss Plaintiff’s Unruh Act claim for lack of subject matter  
24 jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1). *See* Doc. No. 12 at 3.  
25 Specifically, Defendant asks the Court to decline to exercise supplemental jurisdiction  
26 over Plaintiff’s Unruh Act claim under 28 U.S.C. § 1367(c). *See id.* Pursuant to 28  
27 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. 12-1 at 5. Defendant argues “Plaintiff is a  
12 ‘high-frequency litigant’” as evidenced by the over thirty “access lawsuits” Plaintiff has  
13 filed in this year alone. *See id.* at 2. Defendant also draws attention to the Court’s  
14 previous order declining to exercise supplemental jurisdiction in a separate lawsuit filed  
15 by Plaintiff. *Id.* at 2 (citing *Dalfio v. SECVD & I, Inc.*, No. 21-CV-929-MMA (AGS),  
16 2021 WL 4197203 (S.D. Cal. Sept. 15, 2021)). Defendant suggests that Plaintiff is  
17 intentionally evading the heightened pleading standards for Unruh Act claims in state  
18 court by filing his lawsuit in federal district court. *See* Doc. No. 12-1 at 4. The Court  
19 agrees.

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

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

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

1 1131 (S.D. Cal. 2005) (citing *Hanna v. Plumer*, 380 U.S. 460, 475–77 (1965)), the Court  
2 finds that it is a further compelling reason to decline the exercise of supplemental  
3 jurisdiction. *See Schutza*, 262 F. Supp. 3d at 1031 (finding the court’s interest in  
4 discouraging forum-shopping to be an exceptional circumstance justifying the declining  
5 of supplemental jurisdiction over the Unruh Act claim); *Langer*, 516 F. Supp. 3d at 1090  
6 (finding discouraging forum shopping to be a compelling interest in support of the court’s  
7 decision to decline the exercise of supplemental jurisdiction over the Unruh Act claims);  
8 *Marquez*, 492 F. Supp. 3d at 1063 (finding that California’s statutory reforms and  
9 corresponding increase in federal filings of disability discrimination claims raises  
10 compelling concerns about forum-shopping).

11         Additionally, several courts in this circuit have found that Unruh Act claims  
12 substantially predominate over ADA claims where a plaintiff alleges numerous  
13 violations, due to the more expansive remedies available under the Unruh Act. *See, e.g.,*  
14 *Schutza*, 262 F. Supp. 3d at 1030 (finding that plaintiff’s Unruh Act claims substantially  
15 predominated over ADA claims where plaintiff alleged nine violations, making available  
16 \$36,000 in statutory damages); *Brick Oven Rest.*, 406 F. Supp. 2d at 1131 (finding that  
17 plaintiff’s Unruh Act claims substantially predominated over ADA claims where plaintiff  
18 alleged fourteen violations, making available \$56,000 in statutory damages); *Molski v.*  
19 *Hitching Post I Rest., Inc.*, No. CV 04-1077 SVW (RNBx), 2005 U.S. Dist. LEXIS  
20 39959, at \*23 (C.D. Cal. May 24, 2005) (finding that plaintiff’s Unruh Act claims  
21 substantially predominated over ADA claims where plaintiff alleged thirteen violations,  
22 making available \$52,000 in statutory damages). While the Ninth Circuit has never  
23 directly addressed this issue, *c.f. Armstrong v. Nan, Inc.*, 679 F. App’x 582 (9th Cir.  
24 2017) (affirming a district court’s decision to decline to exercise supplemental  
25 jurisdiction over a state law age discrimination claim because of “the divergence of  
26 elements and remedies available under federal versus Hawaii state law”), the Court finds  
27 that a damages-focused approach to determining predominance is appropriate here. The  
28 only available remedy under the ADA is injunctive relief. *See* 42 U.S.C. § 12188(a)(1);

1 *see also Wander v. Kaus*, 304 F.3d 856, 858 (9th Cir. 2002) (“Damages are not  
2 recoverable under Title III of the ADA - only injunctive relief is available for violations  
3 of Title III.”). However, in addition to injunctive relief, the Unruh Act provides for  
4 statutory damages “in no case less than four thousand dollars (\$4,000),” for each  
5 violation. Cal. Civ. Code § 52. Plaintiff asserts a total of fifteen violations. *See* FAC ¶  
6 20. Thus, a minimum of \$60,000 in statutory damages is available to Plaintiff under state  
7 law should he prevail. The mere availability of monetary damages under the Unruh Act,  
8 coupled with the magnitude of potential recovery available to Plaintiff based on the  
9 number of violations he alleges, further indicates that Plaintiff’s predominant focus is  
10 recovering financially under state law. Accordingly, the Court finds that Plaintiff’s  
11 Unruh Act claim substantially predominates over his ADA claim due to the disparity in  
12 remedies available. *See Gibbs*, 383 U.S. at 726 (explaining that state law claims may  
13 “substantially predominate” over federal claims “in terms of . . . the comprehensiveness  
14 of the remedy sought . . .”).

15 In opposition, Plaintiff argues the Court should not decline to exercise  
16 supplemental jurisdiction because it would promote judicial economy for Plaintiff’s  
17 federal ADA claim and state Unruh Act claim to be litigated in one suit. *See* Doc. No. 13  
18 at 7. Plaintiff contends that “[t]wice the judicial and economic resources would have to  
19 be expended to obtain the same result, and both the courts and the parties would be  
20 highly inconvenienced.” *Id.* at 8. Yet as other courts have recognized, this is a problem  
21 of Plaintiff’s own making: “Had [Plaintiff] brought this suit in state court, there would  
22 have been only one suit pending and he would have been eligible to receive every form of  
23 relief he seeks: an injunction, money damages, and attorney’s fees.” *Schutz v. Alessio*  
24 *Leasing, Inc.*, No. 18CV2154-LAB (AGS), 2019 WL 1546950, at \*4 (S.D. Cal. Apr. 8,  
25 2019).

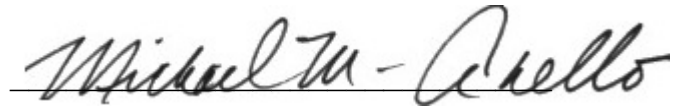
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1 **IV. CONCLUSION**

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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