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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CHRIS LANGER,

Plaintiff,

v.

ROYA NIKZAD PHD ALLERGY &
ACUPUNCTURE,

Defendant.

Case No.: 3:22-cv-02050-RBM-DDL

**ORDER GRANTING MOTION TO
REMAND**

[Doc. 9]

Before the Court is Plaintiff Chris Langer’s (“Plaintiff”) Motion to Remand. (Doc. 9.) Defendant Roya Nikzad PHD Allergy & Acupuncture (“Defendant”) has filed an Opposition (Doc. 12), and Plaintiff filed a Reply (Doc. 13). Additionally, Defendant filed a Sur-Reply. (Doc. 16.) For the reasons set forth below, the Motion to Remand is **GRANTED** and this case is **REMANDED** to state court.

I. BACKGROUND

A. Procedural History

Plaintiff’s Complaint was initially filed in San Diego Superior Court and then removed by Defendant to this Court. (Doc. 1.) Defendant’s Notice of Removal asserts

1 this Court has subject matter jurisdiction based on federal question. (Doc. 1 at 2.¹) Shortly
2 after the case was removed, Defendant filed a Motion to Dismiss based on failure to state
3 a claim under Federal Rule of Civil Procedure 12(b)(6). (Doc. 7.) Plaintiff then filed the
4 instant Motion to Remand requesting the Court remand the case back to state court. (Doc.
5 9.) Plaintiff argues the removal was improper because Plaintiff alleges no federal claims.
6 (*Id.*)

7 **B. Plaintiff’s Complaint**

8 The Complaint alleges two state-law claims: (1) violation of the Unruh Civil Rights
9 Act, California Civil Code § 51 (“Unruh Act”) (Compl. ¶¶ 44–51); and (2) violation of the
10 California Disabled Persons Act, California Civil Code § 54.1 (“CDPA”) (*id.* ¶¶ 52–55).

11 The Complaint alleges Plaintiff is hard of hearing and “relies on subtitles and closed
12 captioning to consume audio and recorded content.” (*Id.* ¶¶ 14–15.) Plaintiff explains he
13 attempted to view video content on Defendant’s website—“About Us” and “Brain Fog and
14 insomnia NEAT treatment–Stephanie P,” but the videos were inaccessible because they
15 lacked closed captioning. (*Id.* ¶¶ 16–22, 26.) The Complaint asserts that because
16 Defendant has failed to provide an accessible website in usable condition for people with
17 disabilities, Plaintiff has been denied the use and enjoyment of the facilities, goods,
18 services, and benefits offered by Defendants. (*Id.* ¶¶ 23–25, 28.) The Complaint further
19 alleges Plaintiff has been deterred from Defendant’s services because of the inaccessible
20 website. (*Id.* ¶¶ 27, 29, 31.)

21 Additionally, the Complaint contends that the industry standards for website design
22 are well-known, and Defendant’s website was “intentionally designed, and based on
23 information and belief, it is the Defendant’s policy and practice to deny” website access,
24 including low-cost closed captioning. (*Id.* ¶¶ 32–38.) Plaintiff seeks compliance with all
25 federal and state accessibility laws and asserts that compliance with W3C Web Content
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28 ¹ The Court cites the CM/ECF electronic pagination unless otherwise noted.

1 Accessibility Guidelines (“WCAG”) 2.0 AA standards is a viable remedy for the
2 deficiencies. (*Id.* ¶¶ 30, 32–33.) In the Prayer of the Complaint, Plaintiff seeks injunctive
3 relief—ongoing compliance with WCAG 2.0+, that new video postings have closed
4 captioning, employee training on access to customers with disabilities—statutory damages
5 under the Unruh Act or CDPA, and reasonable attorney’s fees, litigation expenses, and
6 costs of suit under California Civil Code § 52 and 42 U.S.C. § 12205. (Doc. 1-2 at 10–11.)

7 **II. LEGAL STANDARDS**

8 **A. Removal**

9 A civil case brought in state court can be removed to federal court if the federal court
10 has original jurisdiction. 28 U.S.C. § 1441. A removed case may be remanded for lack of
11 subject matter jurisdiction at any time before final judgment. 28 U.S.C. 1447(c). “As a
12 general rule, absent diversity jurisdiction, a case will not be removable if the complaint
13 does not affirmatively allege a federal claim.” *Beneficial Nat’l Bank v. Anderson*, 539 U.S.
14 1, 6 (2003) (Explaining narrow exceptions based on specific federal statutes and
15 preemption).

16 “[R]emoval statutes should be construed narrowly in favor of remand to protect the
17 jurisdiction of state courts.” *Harris v. Bankers Life and Cas. Co.*, 425 F.3d 689, 698 (9th
18 Cir. 2005) (citation omitted); *Academy of Country Music v. Cont’l Cas. Co.*, 991 F.3d 1059,
19 1068 (9th Cir. 2021) (“Other than for cases under the Class Action Fairness Act of 2005
20 (CAFA), we strictly construe the removal statute against removal jurisdiction.”) (citations
21 omitted); *Gaus v. Miller*, 980 F.2d 564, 566 (9th Cir. 1992). Even though a plaintiff is
22 generally the moving party on a motion to remand, “[t]he ‘strong presumption’ against
23 removal jurisdiction means that the defendant always has the burden of establishing that
24 removal is proper.” *Gaus*, 980 F.2d at 566. Additionally, as the party asserting this Court
25 has jurisdiction, Defendant has the burden of establishing subject matter jurisdiction.
26 *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (“It is presumed that
27 a cause lies outside this limited jurisdiction and the burden of establishing the contrary rests
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1 upon the party asserting jurisdiction.”) “[T]he court resolves all ambiguity in favor of
2 remand to state court.” *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042 (9th Cir. 2009).

3 **B. Federal Question Jurisdiction**

4 Defendant’s Notice of Removal asserts this Court has subject matter jurisdiction
5 based on federal question. (Doc. 1 at 2 (citing 28 U.S.C. § 1331).) “The presence or
6 absence of federal-question jurisdiction is governed by the well-pleaded complaint rule,
7 which provides that federal jurisdiction exists only when a federal question is presented on
8 the face of the plaintiff’s properly pleaded complaint.” *Caterpillar Inc. v. Williams*, 482
9 U.S. 386, 392 (1987) (citations omitted).

10 Federal courts have subject matter jurisdiction based on federal question over
11 “actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C.
12 § 1331. Although federal question jurisdiction is generally based on the presence of a
13 federal claim, “[a] case may also arise under federal law where ‘it appears that some
14 substantial, disputed question of federal law is a necessary element of one of the well-
15 pleaded state claims.’” *Wander v. Kaus*, 304 F.3d 856, 858 (9th Cir. 2002) (quoting
16 *Franchise Tax Bd. of State of Cal. v. Constr. Laborers Vacation Tr. for S. Cal.*, 463 U.S.
17 1, 13 (1983)). “However, the ‘mere presence of a federal issue in a state cause of action
18 does not automatically confer federal-question jurisdiction.’” *Id.* (quoting *Merrell Dow
19 Pharm. Inc v. Thompson*, 478 U.S. 804, 813 (1986)).

20 **III. DISCUSSION**

21 Defendant argues this Court has subject-matter jurisdiction based on federal question
22 because the Complaint alleges violations of the Americans with Disabilities Act (“ADA”),
23 seeks injunctive relief, lacks intentional discrimination under state law, and the
24 Complaint’s prayer cites an attorney’s fee provision under federal law. (Doc. 12 at 2–7.)
25 Plaintiff argues allegations of ADA violations are insufficient to create federal question
26 jurisdiction when only state law claims are asserted, including when injunctive relief is
27 sought, and that a multitude of district courts have remanded cases like this one. (Doc. 9-
28 1 at 4–6, Doc. 13 at 2–3.)

1 Plaintiff's Complaint does not assert any federal claims, only two state law claims.
2 The question then is whether Plaintiff's state law claims arise under federal law for any of
3 the reasons advanced by Defendant in attempting to meet its burden to establish federal
4 question jurisdiction: (1) reliance on the ADA; (2) lacking intentional discrimination; (3)
5 seeking injunctive relief; and (4) citation of federal statute in the prayer.

6 **A. Reliance on ADA violations for State Law Claims**

7 The Complaint does reference the ADA, including under each state claim. (Compl.
8 ¶¶ 46, 53.) However, Plaintiff's state claims being "premised on ADA violations do[es]
9 not create federal question jurisdiction." *Rutherford v. La Jolla Riviera Apartment House*
10 *LLC*, Case No. 19cv1349 JM (MDD), 2019 WL 6125255, at *2–3 (S.D. Cal. Nov. 19,
11 2019) (collecting cases finding state claims premised on ADA violations do not create
12 federal question jurisdiction).

13 The Complaint asserts the Unruh Act and CDPA provide that a violation of the ADA
14 is a violation of each state law. (¶ 46 (citing Cal. Civ. Code § 51(f) (Unruh Act)), ¶ 53
15 (citing § 54.1(d) (CDPA)).) However, Plaintiff's state law claims do not rely solely on
16 violations of the ADA. Not only do these state laws themselves provide alternative ways
17 to violate them independent of the ADA, but the Complaint itself states as much by also
18 relying on § 51(b) for the Unruh Act claim (Compl. ¶ 45) and § 54.1 for the CDPA claim
19 (Compl. ¶ 52). These are alternative and independent state law theories. "When a claim
20 can be supported by alternative and independent theories – one of which is a state law
21 theory and one of which is a federal law theory – federal question jurisdiction does not
22 attach because federal law is not a *necessary element* of the claim." *Rains v. Criterion Sys.,*
23 *Inc.*, 80 F.3d 339, 346 (9th Cir. 1996) (emphasis added); *see also Wander*, 304 F.3d at 858
24 ("[T]he mere presence of a federal issue in a state cause of action does not automatically
25 confer federal-question jurisdiction.") (citations omitted).

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1 Additionally, despite Defendant’s accusations that Plaintiff is engaging in
2 “gamesmanship” and “purposefully try[ing] to divest this Court of jurisdiction” (Doc. 12
3 at 6), Plaintiff has simply filed a case asserting two state law claims and chosen not to
4 assert any federal claims on the same basis. That is his choice. *See Rains*, 80 F.3d at 344
5 (“[Plaintiff] chose to bring a state claim rather than a [federal] claim, and was entitled to
6 do so.”) (citations omitted). Plaintiff has not omitted a “federal law *essential* to his claim
7 or ... cast[] in state law terms a claim that can be made *only* under federal law.” *Id.*
8 (Explaining artful pleading doctrine) (emphasis added). Rather, Plaintiff has brought state
9 claims and relies on the violation of the ADA as an alternative basis for violation of the
10 state claims along with a state law basis. Because this is not artful pleading, the Court need
11 not recharacterize Plaintiff’s state law claims as federal claims. *Id.* (“An artfully pleaded
12 state law claim may be recharacterized as a federal claim by the court to which it is
13 removed,” but finding instead that defendant improperly rewrote “plaintiff’s properly
14 pleaded claim in order to remove it to federal court.”).

15 Because Plaintiff’s Complaint includes a state law theory that is not based on a
16 violation of the ADA, and an ADA violation is not a necessary element of Plaintiff’s state
17 law claims, federal question jurisdiction is not established.

18 **B. Intentional Discrimination**

19 Defendant attempts to distinguish this case from the many others that have been
20 remanded by arguing “Plaintiff has not pled intentional discrimination which is required to
21 have a ‘stand alone’ Unruh violation.” (Doc. 12 at 4.) Defendant asserts that without the
22 ADA violation Plaintiff must prove intentional discrimination to prevail under the Unruh
23 Act. Not only has Defendant not supported this assertion with any cases finding federal
24 question jurisdiction on this basis, but numerous courts have rejected this argument in
25 remanding similar cases. Some courts have engaged in a Rule 12(b)(6) analysis of the
26 allegations of the Complaint to assess whether the plaintiff has alleged a plausible claim
27 for intentional discrimination under the Unruh Act and found the plaintiffs have done so.
28 *Thurston v. ClearPath Lending, Inc.*, Case No. SACV 18-2094 JVS (JDEx), 2019 WL

1 366405, at *2 (C.D. Cal. Jan. 28, 2019) (citing *Greater Los Angeles Agency for Deafness,*
2 *Inc.*, 742 F.3d 414, 425 (9th Cir. 2014)); *Martinez v. Adidas Am., Inc.*, Case No. EDCV
3 19-841 JGB (KKx), 2019 WL 3002864, at *4 (C.D. Cal July 9, 2019); *Rutherford*, 2019
4 WL 6125255, at *5 (“Although the words ‘intentional,’ ‘willful,’ or the like do not appear
5 in the Complaint, Plaintiff nonetheless pleads a plausible claim for intentional
6 discrimination.”). Other courts have suggested the viability of intentional discrimination
7 is not an issue to resolve in assessing federal question jurisdiction. *Arroyo v. Capitol*
8 *Regency*, No. 2:21-cv-00983-KJM-KJN, 2012 WL 3737679, at *3 (E.D. Cal. Aug. 24,
9 2021) (“[T]his court is not convinced federal question jurisdiction exists simply because
10 [Plaintiff] ... does not allege intentional discrimination.”); *Licea v. J&P Park Acquisitions,*
11 *Inc.*, Case No. CV 19-68-R, 2019 WL 1296876, at *1 (C.D. Cal. Mar. 20, 2019) (“The
12 [Unruh Act] may be violated in a number of ways, with an ADA violation being just one
13 possibility. *See* Cal. Civ. Code § 51. Whether Plaintiffs have a viable claim under the
14 [Unruh Act] is a question for the state court and has no bearing on the issue of federal
15 jurisdiction.”).

16 Here, Plaintiff specifically pleads a claim under § 51(b), a separate provision of the
17 Unruh Act that does not rely on an ADA violation. Additionally, the Complaint alleges
18 Defendant intentionally designed its website without following well-known industry
19 standards and has a practice and policy of denying website access despite the ability to
20 provide access easily and at a low cost. (Compl. ¶¶ 32–38.) The Court finds these
21 allegations and Plaintiff’s reliance on state law provisions that are independent of the ADA
22 provide an “alternative and independent ... state law theory” sufficient that “federal
23 question jurisdiction does not attach.” *Rains*, 80 F.3d at 346; *see also Rutherford*, 2019
24 WL 6125255, at *2 (“[S]ection 51(b) guarantees specific rights to persons with disabilities
25 and can serve as a basis for a claim independent of the ADA.”) (citing *Munson v. Del Taco*,
26 208 P.3d 623, 627 (Cal. 2009) and *Cullen v. Netflix, Inc.*, 880 F. Supp. 2d 1017, 1024 (N.D.
27 Cal. 2012)).

1 **C. Injunctive Relief**

2 Defendant argues this Court has federal question jurisdiction because Plaintiff is
3 seeking injunctive relief, including compliance with the ADA. (Doc. 12 at 2–6.) However,
4 Defendant does not cite any cases where a court has actually found federal question
5 jurisdiction existed because the plaintiff sought injunctive relief. Defendant relies on a
6 footnote in *Pickern v. Best Western Timber Code Lodge Marianan Resort*, where the court
7 indicates that injunctive relief premised solely on a violation of the ADA would create
8 federal jurisdiction. 194 F.2d 1128, 1133 n. 5 (E.D. Cal. 2002). However, as discussed
9 above, Plaintiff’s claims are not premised solely on a violation of the ADA. (*See* III.A.1.)
10 “Unlike the situation referenced in *Pickern*, ... Plaintiff’s Unruh Act claim for injunctive
11 relief is not based solely on a violation of the ADA; he also alleges that Defendant’s
12 conduct violates the Unruh Act based on the act’s own provisions.” *Rios v. New York and*
13 *Co., Inc.*, Case No. 2:17-cv-04676-ODW (AGRx), 2017 WL 3575220, at *2 (C.D. Cal.
14 Aug.17, 2017); *see also* *Castillo v. Lundt and Sprungli USA Inc.*, Case No. 2:19-cv-08483-
15 SVW-KS, 2019 WL 6910354, at *2 (C.D. Cal. Dec. 18, 2019) (Describing this finding in
16 *Pickern* as a hypothetical situation where there was no independent state law basis for
17 jurisdiction under the Unruh Act); *see also* *ClearPath*, 2019 WL 366405, at *3 (“[T]he
18 crucial difference between that theoretical scenario and the case at bar is that Plaintiff
19 alleges multiple theories upon which Defendant may be liable.”).

20 Here, “[t]his court follows the substantial weight of district court precedent holding
21 that a claim for injunctive relief potentially premised on ADA violations incorporated into
22 the Unruh Act does not create federal jurisdiction.” *Castillo*, 2019 WL 6910354, at *2
23 (citing *Rutherford*, 2019 WL 6125255, at *3–4 and *ClearPath*, 2019 WL 366405, at *4).
24 “[T]here is no good reason to deviate from the multitude of other district courts finding
25 that Unruh Act claims premised on the ADA, including those seeking injunctive relief, are
26 outside the court’s federal question jurisdiction.” *Rutherford*, 2019 WL 6125255, at *4.

27 Plaintiff’s request for injunction relief does not create federal question jurisdiction.
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1 **D. Citation of 42 U.S.C. § 12205**

2 Plaintiff's erroneous² citation of a federal attorney's fee provision, 42 U.S.C.
3 § 12205, in the Prayer also does not create federal question jurisdiction. Defendant argues
4 the citation of a federal statute in the Prayer creates federal question jurisdiction because it
5 means Plaintiff is asserting an ADA claim. (Doc. 12 at 3–4.) Defendant also argues in its
6 Sur-Reply that "Plaintiff has conceded that this court has subject-matter jurisdiction over
7 the current Complaint" because Plaintiff indicates the citation was in error and he is willing
8 to amend the Complaint to remove the citation but has not filed a motion for leave to amend
9 the Complaint." (Doc. 16 at 2–3.)

10 However, Defendant cites no cases in support of finding federal question jurisdiction
11 based on citation in a prayer when there are no federal claims. Defendant asserts courts
12 can consider prayers in assessing jurisdiction, (Doc. 12 at 3), but the cases cited are not
13 assessing federal question jurisdiction. Two of the cases relied on are looking to the prayer
14 only for purposes of the amount in controversy for diversity jurisdiction, not for federal
15 question. *Quinonez v. FCA US LLC*, No. 2:19-cv-2032-KJM, 2020 WL 339756, *3 (E.D.
16 Cal. June 19, 2020); *Gillings v. Time Warner Cable LLC*, Case No. CV 10-5565 AG
17 (RNBx), 2011 WL 13273074, *3 (C.D. Cal. Jan. 6, 2011). The third case cited discusses
18 the prayer only to note it includes legal damages for purposes of abstention principles. *Ng*
19 *v. Wells Fargo Bank, N.A.*, Case No. 12-cv-05630 NC, 2012 WL 12921072, *2 (N.D. Cal.
20 Nov. 27, 2012).

21 Defendant has not carried its burden in establishing federal question jurisdiction
22 based on this citation when there are no federal claims in the Complaint. In the absence of
23 any federal claims, "[a] request for attorney's fees cannot be a basis for federal
24 jurisdiction." *Carter v. Health Net of Cal.*, 374 F.3d 830, 834 (9th Cir. 2004) (Explaining
25 that "[t]he valid exercise of federal question jurisdiction ... depend[s] upon the substantive
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28 ² Plaintiff's Reply brief indicates that citation of this statute in the Prayer was an error.
(Doc. 13 at 2.)

1 claims raised” and “if the district court lacked jurisdiction over the petition, it could not
2 have exercised jurisdiction based on the request for fees.”); *see also Pelloni v. WE:*
3 *Women’s Ent. Network*, No. CV 08-5612-GPS (AGRx), 2008 WL 4501845, at *4–5 (C.D.
4 Cal. Oct. 5, 2008) (Addressing a federal attorney’s fee provision in the prayer and finding
5 “the fact that it was included in the prayer for relief does not change the nature of the claims
6 and the federal questions they do or do not present.”). The *Pelloni* court also acknowledges
7 the argument that Defendant makes here, “a sort of reverse incorporation” where the
8 mention of the federal statute in the prayer suggests “there were indeed federal claims being
9 brought.” 2008 WL 4501845, at *5. However, after noting the Ninth Circuit’s policy to
10 construe any doubt *against* removal, the court finds this does not create federal question
11 jurisdiction. *Id.*; *see also Thurston v. Container Store, Inc.*, Case No. 5:16-cv-02658-
12 SVW-DTB, 2017 WL 658806, at *3 (C.D. Cal. Feb. 16, 2017) (Finding “it is ambiguous
13 ... whether the ADA’s relation to the Plaintiff’s state cause of action meets the standard
14 for federal question jurisdiction when the claim is not brought under the ADA directly”
15 and remanding because “the court resolves all ambiguity in favor of remand to the state
16 court.”) (quoting *Hunter*, 582 F.3d at 1042). The Court finds Defendant has not established
17 federal question jurisdiction based on this citation in the prayer and even if the Court found
18 it ambiguous, that ambiguity favors remand.

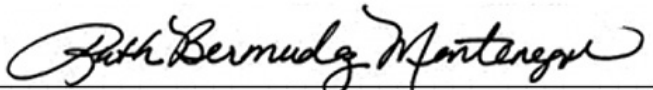
19 None of the reasons advanced by Defendant create federal question jurisdiction over
20 Plaintiff’s state law claims.

21 IV. CONCLUSION

22 Plaintiff’s Motion to Remand is **GRANTED** and the case is **REMANDED** to the
23 Superior Court of California for the County of San Diego. The Clerk shall close the case.

24 **IT IS SO ORDERED.**

25 Dated: September 12, 2023

26 
27 HON. RUTH BERMUDEZ MONTENEGRO
28 UNITED STATES DISTRICT JUDGE