

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Brooke v. Paligroup Management LLC

Brooke · No. 3:24-cv-02003-JAH-VET · Decided August 7, 2025

OPINION

Brooke v. Paligroup Management LLC

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 THERESA BROOKE, a married woman Case No.: 3:24-cv-02003-JAH-VET dealing with
her sole and separate claim, 12

ORDER DECLINING

13 SUPPLEMENTAL JURISDICTION

Plaintiff,

AND DISMISSING PLAINTIFF’S

14

v. THIRD CAUSE OF ACTION

15

PALIGROUP MANAGEMENT LLC, a

16 California limited liability company, 17 Defendant. 18 19

20 INTRODUCTION

21 Pending before the Court is Theresa Brooke’s (“Plaintiff”) Motion for Default 22 Judgement
pursuant to Federal Rule of Civil Procedure 55 filed against Paligroup 23 Management, LLC
 (“Defendant”). ECF No. 6 (“Motion” or “Mot.”). The Court 24 subsequently ordered Plaintiff to
show cause why the Court should not deny supplemental 25 jurisdiction over Plaintiff’s state law
claim on June 2, 2025. ECF No. 7 (“OSC”). On June 26 10, 2025, Plaintiff filed a Response to the
Court’s OSC, arguing the Court should extend 27 28 1 supplemental jurisdiction to Plaintiff’s
California State Unruh Act (“Unruh”) claim. ECF

2 No. 8 (“Response” or “Resp.”). Upon review of Plaintiff’s response and the relevant law,

3 the Court declines to extend supplemental jurisdiction to Plaintiff’s Unruh claim, and 4
Plaintiff’s third cause of action is DISMISSED without prejudice.

5 BACKGROUND

6 In the Complaint, Plaintiff alleges she visits Southern California often for leisure 7 travel and to
test whether various hotels comply with disability access laws. ECF No. 1 8 (“Complaint” or

“Compl.”) ¶ 10. Plaintiff uses a wheelchair due to the loss of a leg. Id. 9 Plaintiff claims she “tests” various hotels at least once per month. Id. This case stems 10 from an October 2024 visit Plaintiff made to Defendant Paligroup Management LLC’s 11 (“Defendant”) hotel at 830 Sixth Avenue, San Diego, California 92101. Id. ¶¶ 2, 11. 12 During this visit, Plaintiff attempted accessing the hotel entrance through the access aisle 13 at the loading zone by the valet. Id. ¶¶ 7, 13. Plaintiff maintains she was not able to use 14 the access aisle because the access ramp was noncompliant with Section 503.3 of the 2010 15 ADA Standards for Accessible Design. Id. ¶ 7. Plaintiff further alleges she plans to return 16 to the hotel in the future. Id. ¶¶ 15,17. 17 Plaintiff filed her Complaint on October 27, 2024, alleging Defendant discriminated 18 against her in violation of Title III of the Americans with Disabilities Act (“ADA”). 19 Specifically, Plaintiff alleges Defendant violated Sections 12102 (2) and 121282(b)(2)(iv) 20 as Defendant’s hotel was not compliant with Sections 209.4 and 503.3 of the 2010 ADA 21 Standards for Accessible Design. Compl. ¶¶ 8, 12, 19. Also, Plaintiff alleges, because the 22 23 24 1 Plaintiff claims Unruh is preempted by 28 C.F.R. § 36.103(c) because it is in conflict 25 with federal law. However, the Court finds there is no conflict. See 28 C.F.R. § 36.103(c) (stating “[t]his part does not invalidate or limit the remedies ... and procedures of ... State 26 or local laws that provide greater or equal protection”); see *Brooke v. Sapphire Investments* 27 LLC, 2022 WL 18397389, at *1 (C.D. Cal. Nov. 9, 2022) (explaining California’s decision to place procedural limitations on high-frequency litigants “does not give rise to any 28 1 Defendant discriminated against Plaintiff under the ADA, Defendant has also violated 2 California’s Unruh Act. Id. ¶ 33. Plaintiff seeks injunctive relief and attorney’s fees and 3 costs under her ADA and Unruh claims. Id. ¶¶ 24,31,37. Plaintiff further requests 4 monetary damages under her Unruh claim. Id. ¶¶ 36,37. 5 On March 6, 2025, Plaintiff requested an entry of default because Defendant failed 6 to file a responsive pleading. ECF No. 4. The clerk of court entered default against 7 Defendant on the same day. ECF No. 5. On March 23, 2025, Plaintiff filed the instant 8 Motion. Mot. at 1.

9 LEGAL STANDARD

10 When the clerk of the court files an entry of default, the non-defaulting party must 11 file a separate motion for default judgement. See *Symantec Corp. v. Glob. Impact, Inc.*, 12 559 F.3d 922, 923 (9th Cir. 2009); see also Fed. R. Civ. P. 55(a)-(b). When reviewing a 13 plaintiff’s motion for default judgement, district courts have an “affirmative duty to look 14 into its jurisdiction over both the subject matter and the parties.” In re Tuli, 172 F.3d 707, 15 712 (9th Cir. 1999). 16 Usually, district courts have original jurisdiction over cases where there is diversity 17 amongst the parties, a claim arises under federal law, or any reasons enumerated by the 18 Constitution or by Congress in statute. See 18 U.S.C. § 3231; 28 U.S.C. §§ 1330-1369. 19 Courts also have supplemental jurisdiction over state law claims “that are so related to 20 claims in the action within such original jurisdiction that they form part of the same case 21 or controversy under Article III of the United States Constitution.” 28 U.S.C. § 1367(a). 22 In other words, “the state and federal claims must derive from a common nucleus of 23 operative fact.” *United Mine*

Workers of Am. v. Gibbs, 383 U.S. 715, 725 (1966). 24 However, this is a “doctrine of discretion, not of plaintiff’s rights.” Id. at 726. District 25 courts have the discretion to deny jurisdiction over supplemental claims due to: 26 (1) the claim raising a novel or complex issue of state law; 27 (2) the claim substantially predominates over the claim or claims 28 over which the district court has original jurisdiction, 1 (3) the district court has dismissed all claims over which it has 2 original jurisdiction, or 3 (4) in exceptional circumstances, there are other compelling reasons 4 for declining original jurisdiction. 5 28 U.S.C. §§ 1367 (c)(1)-(4). 6 When a court denies supplemental jurisdiction pursuant to 28 U.S.C. Sections 1367 7 (c)(1)-(3), it is not required to provide an explanation. See San Pedro Hotel Co., Inc v. 8 L.A., 159 F.3d 470, 478 (9th Cir. 1998). However, if a court decides to deny supplemental 9 jurisdiction pursuant to 28 U.S.C. Section 1367 (c)(4), it must provide a two-part 10 explanation. See Arroyo v. Rosas, 19 F.4th 1202, 1210 (9th Cir. 2021). 11 First, the court must articulate which circumstances make the case exceptional. See 12 San Pedro Hotel Co., Inc, 159 F.3d at 478 (citation omitted). The court “needs to only 13 identify the exceptional circumstances and confirm that they apply to the particular case 14 before it.” Vo v. Choi, 49 F.4th 1167, 1173 (9th Cir. 2022) (emphasis in original). Just 15 because the “same circumstances also apply to other cases” does not make a court’s 16 analysis “too general.” Id. Second, pursuant to Gibbs, the court must articulate how 17 “judicial economy, convenience, fairness to litigants, and comity” weigh in favor of 18 declining supplemental jurisdiction. 383 U.S. at 726. The court is “required [to provide] 19 similar levels of specificity” as the first prong to satisfy it. Vo, 49 F.4th at 1173.

20 DISCUSSION

21 The Ninth Circuit has upheld California plaintiffs use of a federal forum to avoid 22 heightened state pleading standards to be an “exceptional circumstance” justifying the 23 denial of supplemental jurisdiction under 28 U.S.C. Section 1367 (c)(4). Vo, 49 F.4th at 24 1174. Therefore, under its obligation to ensure it has subject matter jurisdiction, the Court 25 looks at whether Plaintiff or Plaintiff’s counsel fit California’s definition of a “high- 26 frequency litigant,” thereby creating an “exceptional circumstance.” 27 /// 28 /// 1 A. Plaintiff is a High Frequency Litigant 2 Plaintiff argues the word “filed” is ambiguous in California’s definition of a “high- 3 frequency litigant,” and therefore, it is “debatable” whether Plaintiff fits the definition

4 Resp. at 1-2. Plaintiff explains, while there are more than ten construction-related ADA

5 and Unruh complaints listing her as the plaintiff, she did not personally “file” those 6 complaints, but rather her attorney Mr. Peter Strojnik filed them on her behalf. Id. 7 Additionally, Plaintiff contends that Mr. Strojnik is not a “high-frequency litigant” under

8 Section 425.55(b)(2) because he has not represented ten or more individual high-frequency

9 plaintiffs in the past year, but rather all his numerous ADA lawsuits are filed on Plaintiff’s 10 behalf. Response at 2.

11 In 2012, the California Legislature amended the Unruh Act with California Code of

12 Civil Procedure Sections 425.50 and 425.55 to discourage a trend of lawsuits that abused 13

the “recovery of damages not available under the ADA.” *People v. Potter Handy, LLP*, 97 14 Cal. App. 5th 938, 945 (2023) (citation omitted). Under California Code of Civil Procedure 15 Section 425.55 et seq., the California Legislature identified these filers as “high-frequency 16 litigant[s].” The amendment outlines two requirements to be considered a high-frequency 17 litigant. First, the basis of the claim must be “brought under Section 51, 54, 54.1, or 55, 18 based wholly or in part on an alleged violation of any construction related accessibility 19 standard.” Cal. Civ. Code § 55.52 (a)(1). Secondly, one must be a: 20 (1) plaintiff who has filed 10 or more complaints alleging a construction- 21 related accessibility violation within the 12-month period immediately 22 preceding the filing of the current complaint alleging a construction- 23 related accessibility violation or 24 (2) an attorney who has represented as attorney of record 10 or more high- 25 frequency litigant plaintiffs in actions that were resolved within the 12- 26 month period immediately preceding the filing of the current complaint 27 alleging a construction-related accessibility violation, excluding all of 28 the following actions. 1 Cal. Civ. Proc. Code § 425.55(b)(1)-(2). When both requirements are established, high- 2 frequency litigants have heightened pleading standards under California Code of Civil 3 Procedure Section 425.50. When high-frequency litigants file in federal court, they bypass 4 the heightened pleading standard “resulting [in] differences between state court and federal 5 court ... producing significant consequences for the filing of ADA-based Unruh Act 6 claims.” *Arroyo v. Rosas*, 19 F.4th 1202, 1207 (9th Cir. 2021). 7 The Court is concerned about the high volume of ADA-based Unruh claims in 8 federal court that appear to be forum-shopping to circumvent the procedural safeguards put 9 in place by California’s legislature. Accordingly, the Court issued its OSC to determine 10 whether Plaintiff and/or Mr. Stojnik fall into the category of “high-frequency litigants,” 11 which would subject their lawsuit to heightened pleading standards in state court. Plaintiff 12 submitted a declaration in response to the OSC, stating: 13 in the past twelve months preceding the filing of this case, my attorney Peter Kristofer Stojnik has filed 10 or more construction-related 14 accessibility violation complaints on my behalf and at my direction, with 15 me as the named plaintiff. 16 Plaintiff’s Decl. ¶ 3. Plaintiff contends that the California legislature did not intend for the 17 word “filed” to include other persons (such as Plaintiff’s counsel) filling on behalf of a 18 litigant in California Civil Procedure Section 425.55(b)(1). Therefore, Plaintiff argues, 19 because Mr. Stojnik filed on her behalf, she is not a “high-frequency litigant.” Plaintiff 20 has previously attempted this argument in the Central District of California; and like those 21 cases, this Court is not persuaded by Plaintiff’s attempt to place ambiguity on the definition 22 of “filing.” See *Brooke v. Gehna*, Case No. 2:24-cv-04889-SPG-MAR, 2024 WL 4003157, 23 at *1, (C.D. Cal. July 18, 2024) (explaining, “[i]t would frustrate Section 425.55’s purpose 24 to allow plaintiffs to evade it by using others—lawyers, or even non-lawyer—to physically 25 or electronically file their complaints”); *Brooke v. Onni 888 Olive St. LP*, Case No. 2:23- 26 cv-09342 HDV (KSx), 2023 WL 9689134, at *2 (C.D. Cal. Nov. 29, 2023) (“[t]hat her 27 attorney filed the complaints on her behalf and at her direction does not exempt her

from 28 the definition”); *Brooke v. Ferrado Hotels LLC*, Case No. 2:23-cv-09261-HDV (SSCx), 1 2024 WL 1136402, at *2 (C.D. Cal. Feb. 8, 2024) (same). Accordingly, this Court finds 2 Plaintiff is a “high-frequency litigant” within the meaning of Section 245.55(b)(1). 3 B. The Court Declines to Extend Supplemental Jurisdiction to Plaintiff’s State Unruh 4 Claims 5 Having determined Plaintiff is a “high-frequency litigant” under Section 6 245.55(b)(1) (and, therefore, would be subject to heightened pleading standards in state 7 court), the Court next looks to: (1) whether the facts of this case constitute an exceptional 8 circumstance in which the Court should deny supplemental jurisdiction; and (2) whether 9 denying supplemental jurisdiction is in the best interest of “judicial economy, convenience, 10 fairness to litigants, and comity.” See *Vo*, 49 F.4th at 1171. 11 In *Arroyo*, the plaintiff filed claims under the ADA and California’s Unruh Act in 12 federal court. 19 F.4th at 1205. At the summary judgment stage, the district court denied 13 supplemental jurisdiction over the plaintiff’s Unruh claim. *Id.* On appeal, the Ninth Circuit 14 reviewed the district court’s two-prong explanation of its decision to decline supplemental 15 jurisdiction and affirmed the district court’s finding that the first prong was satisfied 16 because an exceptional circumstance existed. *Id.* at 1213. The Ninth Circuit found the 17 district court’s reasoning, that Unruh Act plaintiffs have “evaded [California’s procedural] 18 limits” by filing in a federal forum, to meet the threshold of “‘exceptional’ in any 19 meaningful sense of the term.” *Id.* However, the Ninth Circuit found the district court 20 erred in the second prong of its analysis by concluding denying supplemental jurisdiction 21 was in the best interest of “judicial economy, convenience, fairness to litigants, and 22 comity” because the denial came at such a “late stage” in the litigation. *Id.* at 1214. 23 The Ninth Circuit again took up the issue recently in *Vo*. 49 F.4th at 1168. Relying 24 on *Arroyo*, the Ninth Circuit again determined these cases create an exceptional 25 circumstance. *Id.* at 1171. However, unlike *Arroyo*, the Ninth Circuit found there were 26 “compelling reasons” to deny supplemental jurisdiction, satisfying the second prong of the 27 analysis. *Id.* In *Vo*, as here, the plaintiff obtained an entry of default after the defendant 28 failed to respond to the complaint, and the plaintiff then filed a motion for default judgment.

1 *Id.* at 1168. After the plaintiff filed her motion, as here, the district court issued an OSC.

2 *Id.* After considering the plaintiff’s response and determining the plaintiff was a high- 3 frequency litigant, the district court declined supplemental jurisdiction. *Id.* The Ninth 4 Circuit found the Gibbs values of fairness and comity “favored not retaining jurisdiction 5 over the [Unruh] claim” because the district court dismissed the claim “well before it ruled 6 on the merits of the ADA claim.” *Id.* at 1172. Therefore, the Ninth Circuit affirmed the 7 district court’s decision to decline supplemental jurisdiction over the plaintiff’s Unruh 8 claim. *Id.* 9 Like *Arroyo* and *Vo*, there are exceptional circumstances in Plaintiff’s case because, 10 by filing in federal court, Plaintiff attempts to evade and render “toothless” the “procedural 11 strictures” that California put in place to limit high-frequency litigants from placing too 12 high a financial burden on California businesses. *Arroyo*, 19 F.4th at 1212-13. In her 13 briefing, Plaintiff even admits the *Arroyo* court made clear that avoiding California’s 14 heightened pleading standards by filing in federal court

qualifies as an exceptional 15 circumstance. See Response at 2. Furthermore, despite Plaintiff's argument to the 16 contrary, the Court finds the circumstances of this case to be nearly identical to Vo and 17 distinguished from Arroyo. Because it is still early in the litigation process and the Court 18 has not ruled on Plaintiff's ADA claims, the Gibbs values—particularly fairness and 19 comity—support the Court's finding that there are “compelling reasons” to decline 20 supplemental jurisdiction over Plaintiff's Unruh claim. As the Court has “sidestep[ped] 21 the core concern articulated in Arroyo” by denying supplemental jurisdiction well before 22 ruling on the ADA claims, the Court is not “creat[ing] duplicative work for the state court” 23 that would contradict the values of judicial economy and convenience. Vo, 49 F.4th at 24 1171. Rather, it would be “an affront to the comity between federal and state courts to 25 allow plaintiffs to evade California's procedural requirements” and be unfair to defendants.

26 Id. at 1171. Accordingly, the Court declines to extend supplemental jurisdiction over
27 Plaintiff's Unruh claim. 28

1 CONCLUSION

2 For the aforementioned reasons, the Court declines to exercise supplemental 3 ||jurisdiction over Plaintiff's Unruh Act claim, and the claim is DISMISSED without 4 || prejudice. See 28 U.S.C. § 1367(c)(4). 5 IT IS SO ORDERED. 6 || DATED: August 7, 2025

9 OHN A. HOUSTON

UNITED STATES DISTRICT JUDGE

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