UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 20-10752 PA (GJSx)	Date	February 25, 2021
Title	Orlando Garcia v. Gateway Hotel L.P.		

Present: The Honorable	PERCY ANDERSON, UNITED STATES DISTRICT JUDGE	
G. Garcia	Not Reported	N/A
Deputy Clerk	Court Reporter	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:	
None	None	

Proceedings: IN CHAMBERS - COURT ORDER

Before the Court is a Motion to Dismiss filed by defendant Gateway Hotel L.P. (Dkt. No. 20 ("Mot.").) Plaintiff Orlando Garcia ("Plaintiff") filed an Opposition (Dkt. No. 22.) Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds this matter appropriate for decision without oral argument. The hearing calendared for March 1, 2021 at 1:30 p.m., is vacated, and the matter taken off calendar.

I. Background

According to Plaintiff's First Amended Complaint ("FAC"), Plaintiff has "physical disabilities" and is "substantially limited in his ability to walk." (FAC ¶ 1.) Plaintiff "suffers from cerebral palsy," "has the use of only one arm," and "uses a wheelchair, walker or cane for mobility." (Id.) "Due to Plaintiff's disability, "he is unable to, or seriously challenged in his ability to stand, ambulate, reach objects mounted at heights above his shoulders, transfer from his chair to other equipment, and maneuver around fixed objects." (Id. ¶ 11.) "Thus, Plaintiff needs an accessible guestroom and he needs to be given information about accessible features in hotel rooms so that he can confidently book those rooms and travel independently and safely." (Id.)

Plaintiff alleges he "planned on making a trip on October of 2020 to Santa Monica, California for a staycation." (Id. ¶ 13.) Plaintiff claims he "had tremendous difficulty in finding a hotel that provided enough information about accessibility features that would permit him to independently assess whether the rooms worked for him." (Id.) As alleged in Plaintiff's FAC, Plaintiff "felt that the Gateway Hotel in Santa Monica would work well for him due to its desirable location and price point." (Id. ¶ 14.)

On or about September 20, 2020, Plaintiff allegedly "went to the Gateway Hotel Santa Monica website . . . seeking to book an accessible room at the hotel." (Id. ¶ 15.) "Plaintiff was looking specifically for a roll-in shower room with two beds and found that the hotel offered a '2 Queens Accessible Roll-in Shower" room.' (Id. ¶ 17.) After selecting the "view details" button on this particular room, Plaintiff alleges "some information was provided about the particular room but [the website provided] few specific details and mostly [used] vague adjectives such as 'lowered,' 'raised,' or 'accessible' to describe the room's features. (Id. ¶ 18.) As alleged in Plaintiff's FAC, "[a]s for the rest of the hotel features, the hotel again does not provide much in the way of actual data[,] but simply slaps

the label 'accessible' on most features." (Id. ¶ 21.) For example, the hotel states there is "an accessible public bathroom on the 1st floor," and the "[r]oute from the accessible public entrance to the registration area, . . . guestrooms, . . . restaurant, . . . [and] exercise room is accessible." (Id.) In addition, the website lists that the accessible rooms "have larger doorways," "telephones are located next to the bed," the rooms have a "roll-in shower or shower/tub with handheld showerhead and hand rails," and an "ADA compliant sink/vanity." (Id.)

Plaintiff alleges that "claiming something is 'accessible' is a conclusion or opinion," and that under the ADA, "the hotel must not only identify but 'describe accessible features in the hotel and guest rooms offered through its reservation service in enough detail to reasonably permit individuals with disabilities to assess independently whether a given hotel or guess room meets his or her accessibility needs.'" (Id. ¶ 27 (citing 28 C.F.R. 26.302(e)(1)(ii)).) Plaintiff alleges that here, "it would have been sufficient to state 'the route from the public entrance to the registration desk, to the restaurant, to the exercise room, and to the guestrooms are all a minimum of 36 inches in width.'" (Id. ¶ 28.) As another example Plaintiff states a "simple statement that the hotel room entrance and interior doors provide at least 32 inches of clearance is enough to provide plaintiff this critical piece of information about whether he can fit his wheelchair into the hotel rooms." (Id. ¶ 32.) Plaintiff lists five other specific items he believes the hotel's website should be required to specify. (Id.)

As alleged in Plaintiff's FAC, the "lack of information created a difficulty for [Plaintiff] and the idea of trying to book this room . . . caused difficulty and discomfort for Plaintiff and deterred him from booking a room at the Gateway Hotel Santa Monica." (Id. ¶ 36.) Plaintiff alleges he "lives less than 30 minutes from this hotel and frequents the Santa Monica area frequently," and that he plans to return to this location in the future. (Id. ¶ 37.)

Plaintiff brings one cause of action for Violation of the Americans with Disabilities Act of 1990. (Id. ¶¶ 43-46.) Defendant now seeks to dismiss Plaintiff's FAC pursuant to Federal Rule of Civil Procedure 12(b)(6).

II. Legal Standard

For purposes of a Motion to Dismiss brought pursuant to Federal Rule of Civil Procedure 12(b)(6), plaintiffs in federal court are generally required to give only "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). While the Federal Rules allow a court to dismiss a cause of action for "failure to state a claim upon which relief can be granted," they also require all pleadings to be "construed so as to do justice." Fed. R. Civ. P. 12(b)(6), 8(e). The purpose of Rule 8(a)(2) is to "'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). The Ninth Circuit is particularly hostile to motions to dismiss under Rule 12(b)(6). See, e.g., Gilligan v. Jamco Dev. Corp., 108 F.3d 246, 248–49 (9th Cir. 1997) ("The Rule 8 standard contains a powerful presumption against rejecting pleadings for failure to state a claim.") (internal quotation omitted).

However, in Twombly, the Supreme Court rejected the notion that "a wholly conclusory statement of a claim would survive a motion to dismiss whenever the pleadings left open the possibility that a plaintiff might later establish some set of undisclosed facts to support recovery." Twombly, 550 U.S. at 561 (internal quotation omitted). Instead, the Court adopted a "plausibility standard," in which the complaint must "raise a reasonable expectation that discovery will reveal evidence of [the alleged infraction]." Id. at 556. For a complaint to meet this standard, the "[f]actual allegations must be enough to raise a right to relief above the speculative level." Id. at 555 (citing 5 C. Wright & A. Miller, Federal Practice and Procedure §1216, pp. 235–36 (3d ed. 2004) ("[T]he pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action") (alteration in original)); Daniel v. County of Santa Barbara, 288 F.3d 375, 380 (9th Cir. 2002) ("'All allegations of material fact are taken as true and construed in the light most favorable to the nonmoving party.'") (quoting Burgert v. Lokelani Bernice Pauahi Bishop Trust, 200 F.3d 661, 663 (9th Cir. 2000)). "[A] plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Twombly, 550 U.S. at 555 (internal quotations omitted). In construing the Twombly standard, the Supreme Court has advised that "a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009).

III. Judicial Notice

Defendant asks the Court to take judicial notice of five documents:

1. A copy of the "Landing Page" and Accessibility Tab of Defendant's website referred to in Plaintiff's Complaint (Ex. 1);

2. A copy of the relevant pages from Defendant's website showing the various accessible rooms (Ex. 2);

3. A list of Plaintiff's cases filed in California federal court and the San Diego Superior Court (Ex. 3);

4. A copy of the relevant pages from the online building permit records of the Santa Monica government (Ex. 4); and

5. The Consent Decree in U.S. v. Hilton Worldwide, Inc., No. 10-1924, ECF No. 5 (D.D.C. Nov. 29, 2010) (Ex. 5).

(See Request for Judicial Notice in Support of Defendant's Motion to Dismiss First Amended Complaint.).

The Court takes judicial notice of Exhibits 1 and 2, which are both referenced in Plaintiff's Complaint. See Daniels-Hall v. National Educ. Ass'n, 629 F.3d 992, 998 (9th Cir. 2010) (finding district court correctly took judicial notice of information available on websites where "Plaintiffs directly quoted the material posted on these web pages, thereby incorporating them into the Complaint."). Exhibit 4 is an official government record from a government website, and Plaintiff does not dispute the authenticity of this document. See Cota v. Maxwell-Jolly, 688 F. Supp. 2d 980, 998 (N.D. Cal. 2010) ("The Court may properly take judicial notice of the documents appearing on a governmental website.") Thus, the Court takes judicial notice of Exhibit 4.

The Court does not rely on Defendant's Exhibit 3[1/] or Exhibit 5 in reaching it's decision on this Motion. Thus, the Court denies Defendant's Request for Judicial Notice as to Exhibits 3 and 5 as moot.

IV. Analysis

To succeed on a discrimination claim under Title III of the Americans with Disabilities Act "(ADA"), a plaintiff must show that "(1) he is disabled within the meaning of the ADA; (2) the defendant is a private entity that owns, leases, or operates a place of public accommodation; and (3) the plaintiff was denied public accommodation by the defendant because of his disability." Arizona ex rel. Goddard v. Harkins Amusement Enters., Inc., 603 F.3d 666, 670 (9th Cir. 2011). The third element is satisfied when the plaintiff can show a violation of accessibility standards. Rodriguez v. Barrita, Inc., 10 F. Supp. 3d 1062, 1073 (N.D. Cal. 2014). The ADA applies to websites that "impede[] access to the goods and services of . . . places of public accommodation." Robles v. Domino's Pizza LLC, 913 F.3d 898, 905 (9th Cir. 2019), cert. denied 140 S. Ct. 122 (2019).

Here, Plaintiff argues Defendant's reservation system violates 28 C.F.R. § 36.302(e). That section states:

> a place of lodging shall, with respect to reservations made by any means ... (i) Modify its policies, practices, or procedures to ensure that individuals with disabilities can make reservations for accessible guest rooms during the same hours and in the same manner as individuals who do not need accessible rooms; (ii) Identify and describe accessible features in the hotels and guest rooms offered through its reservation service in enough detail to reasonably permit individuals with disabilities to assess independently whether a given hotel or guest room meets his or her accessibility needs; (iii) Ensure that accessible guest rooms are held for use by individuals with disabilities until all other guest rooms of that type have been rented

[1] While the Court does not decide this Motion to Dismiss based on Plaintiff's standing, the Court does find Plaintiff's desire to visit 27 hotels in three months during the Covid-19 pandemic in which Los Angeles residents are being encouraged to stay at home suspicious.

> and the accessible room requested is the only remaining room of that type; (iv) Reserve, upon request, accessible guest rooms or specific types of guest rooms and ensure that the guest rooms requested are blocked and removed from all reservations systems; and (v) Guarantee that the specific accessible guest room reserved through its reservation service is held for the reserving customer, regardless of whether a specific room is held in response to reservations made by others.

Plaintiff argues Defendant's reservation system violates Section 36.302(e) because the website does not provide sufficient detail about accessible features to allow Plaintiff, a wheelchair user, to make an independent assessment of whether these features would meet his needs. Plaintiff suggests that more detailed descriptions of the room's features are needed, such as specific measurement specifications for door width, aisle width, and sink height.

Defendant, in turn, points to a 2010 guidance document from the Department of Justice ("DOJ") entitled "Americans with Disabilities Act Title III Regulations: Nondiscrimination on the Basis of Disability by Public Accommodation and in Commercial Facilities." The DOJ document states that "[f]or hotels that were built in compliance with the 1991 Standards, it may be sufficient to specify that the hotel is accessible and, for each accessible room, to describe the general type of room (e.g., deluxe executive suite), the size and number of beds (e.g., two queen beds), the type of accessible bathing facility (e.g., roll-in shower)."

This Court agrees with Defendant that, based on the allegations in Plaintiff's FAC and the judicially noticeable documents, the descriptions and level of detail provided on Defendant's website are sufficient to comply with the ADA. "[A] website need not list its compliance or non-compliance with every [ADA] Accessibility Guidelines ("ADAAG")] provision to satisfy 28 C.F.R. § 36.302(e)(iii)." Strojnik v. Orangewood LLC, 19-cv-00946, 2020 U.S. Dist. LEXIS 11743, at *20 (C.D. Cal. Jan. 22, 2020) The 2010 DOJ ADAAG Guidance on this provision "recognizes that a reservations system is not intended to be an accessibility survey," and "[b]ecause of the wide variations in the level of accessibility that travelers will encounter . . . it may be sufficient to specify that the hotel is accessible" and to provide basic facts about each accessible room." That is exactly what Defendant does here. Defendant provides Plaintiff notice that it has accessible rooms. While Plaintiff argues that "claiming something is 'accessible' is a conclusion or opinion," the term "accessible" is specifically defined in the ADAAG to describe "a site, building, facility, or portion thereof that complies with these guidelines." 1991 ADAAG § 3.5. Thus, the Defendant's use of the term "accessible" is not merely conclusory, it means that the features in the hotel defined by Defendant as "accessible" comply with the ADAAG.

Other courts have reached the same conclusion. For example, in Rutherford v. Evans Hotels, LLC, the Court found Plaintiff's "contention that '[c]ommon sense dictates that conclusorily stating that its rooms are 'accessible' is not enough detail for Plaintiffs to assess whether a hotel or guest room meets their particular accessibility needs . . . is dubious." 18-cv-00435, 2020 WL 5257868, at * 16 (S.D. Cal. Sept. 3, 2020). The Court pointed to the DOJ's own guidance, which states it may be sufficient to

specify that the hotel is accessible and to describe the general type of room. (Id.) The Court concluded that "[j]ust because Mr. Rutherford would like additional detail does not mean that he is entitled to it under Section 26.302(e)(1)(iii)." Id.; see also Strojnik, 2020 U.S. Dist. LEXIS 11743, at *20 ("[E]ven had Plaintiff identified information that was missing from the website that related to his disability, a website need not list its compliance or non-compliance with every ADAAG provision to satisfy 28 C.F.R. § 36.302(e)(iii)".); Barnes v. Marriott Hotel Servs., 15-cv-01409, 2017 WL 635474, at *10 (N.D. Cal. Feb. 16, 2017) (finding descriptions of rooms stating "[t]his type of room offers mobility accessible rooms" or "[t]his type of room offers accessible rooms with roll in showers" provided the "appropriate and acceptable" level of detail to comply with section 36.302(e)); Strojnik v. Kapalua Land Co., Ltd., 19-cv-1991, 2019 WL 5535766, at *7 (D. Hawai'i Aug, 26, 2019) ("Plaintiff fails to cite to any legal authority providing that failure to detail all accessible and inaccessible elements of a public accommodation results in an ADA violation."). Thus this Court finds, as other courts have already found, that describing a room as "accessible" is sufficient to comply with the ADAAG.

Plaintiff argues he is only asking that "a single paragraph of 5 sentences" be added to the hotel's website: "(1) Doorways provide at least 32-inches of clearance; (2) Beds have at least 30 inches of maneuvering clearance on each side; (3) Toilets have grab bars and the seat is between 17 and 19 inches high; (4) Sinks have knee clearance at least 27 inches high [and] at least 8 inches in depth, plumbing is wrapped, and the mirror's bottom edge is no more than 40 inches in height; and (5) Roll-in shower has grab bars and a detachable hand-held shower spray." (Opp. at 20.) Plaintiff argues this "small list of items are the bare necessities that Plaintiff must know to make an independent assessment of whether the 'accessible' hotel room works for him." (FAC ¶ 9.) Plaintiff further argues that "[o]ther accessibility requirements such as slopes of surfaces, whether the hand-held shower wand has a non-positive shut off valve, the temperature regulator, the tensile strength and rotational design grab bars, and so many more technical requirements under the ADA are beyond what is a reasonable level of detail and [P]laintiff does not expect or demand such information is provided." (Id. ¶ 34.)

Aside from the fact, as noted above, that stating that the room is "accessible" by definition means that the room complies with all of these ADA requirements, Plaintiff's interpretation of what is needed for him to determine whether he can use the room is not the law. While this Plaintiff may think these five sentences are the most important, another plaintiff may think that the slope is the most important thing a website should include. Yet another might think that the weight of the doors should be included on a hotel's website. In short, each individual plaintiff may have a separate list of the five most important things to list from the ADAAG on the hotel's website, such that, in the end, a hotel would be required to state on their website whether their facilities comply with each and every requirement of the AGAAG which is more than 250 pages long. Plaintiff cannot simply cherry pick a handful of regulations he thinks are most important and argue that information is what the law requires.

Finally, should Plaintiff require additional information than what is on the hotel's website, Defendant invites potential guests to "contact the hotel directly for additional details or specific questions on [the hotel's] accessible hotel and room amenities and features" and "provides . . . contact information for [Defendant's] staffed telephone line." (Mot. at 9, Request for Judicial Notice Ex. 1.)

Plaintiff argues that while "[h]aving a hotel phone operator ready to provide information about accessibility features is great," it "does not excuse the hotel from providing such information on its reservation website." (Opp. at 4.) Plaintiff cites no case law for this position, and in fact the DOJ and case law state otherwise. The DOJ acknowledges that "individuals with disabilities may wish to contact the hotel or reservations services for more detailed information." 28 C.F.R. § Pt. 36, App. A. Courts have interpreted this to mean that a website need not include all potentially relevant accessibility information where an inquiring patron can simply call the hotel for more information. See Strojnik, 2020 U.S. Dist. LEXIS 11743, at *21 ("if a website was required to have all relevant information, individuals would not [be directed by the DOJ] to call the hotel to get further information."). Thus, for this additional reason, the Court finds Plaintiff has failed to state a claim that Defendant's website violates the ADA.

Conclusion

For the reasons stated above, the Court finds that Plaintiff fails to adequately state a claim that Defendant's website violates the ADA. In addition, the Court finds that, based on Plaintiff's own FAC and the judicially noticed documents, Defendant's website does comply with the ADA. Thus, the Court finds any future amendment would be futile. The Court therefore dismisses Plaintiff's Complaint with prejudice. The Court will issue a judgment consistent with this Order.

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAMUEL LOVE,

Plaintiff,

v.

GATES HOTEL, INC.,

Defendant.

Case No. 20-cv-07191-SI

ORDER GRANTING DEFENDANT'S MOTION TO DIMISS

Re: Dkt. No. 11

On February 1, 2021, defendant Gates Hotel filed the instant motion to dismiss plaintiff's amended complaint in its entirety for failure to state a claim pursuant to FRCP 12(b)6. Dkt. No. 11 (Ntc. Of Mot. To Dismiss). Plaintiff's opposition to the motion was due on February 16, 2021, but nothing was filed. On February 17, 2021, the Court's courtroom deputy emailed plaintiff's counsel asking if an opposition would be filed; she received no response. On February 18, 2021 at 8 am, the court's courtroom deputy emailed plaintiff's counsel again, this time stating that if no opposition was received by noon that day the motion would be deemed unopposed. Plaintiff's counsel did not respond to the second email nor has an opposition been filed.

Plaintiff's amended complaint alleges two causes of action (1) violation of the Americans with Disabilities Act and (2) violation of California's Unruh Act. In short, plaintiff, a California resident and paraplegic who uses a wheelchair for mobility, solely challenges defendant Gates Hotel's online reservation policies and practices. Dkt. No. 9 ¶ 7 (Amended Complaint). The amended complaint makes clear plaintiff "is not claiming that the hotel has violated any construction-related accessibility standards." *Id*.

Defendant's unopposed motion to dismiss the amended complaint in its entirety argues its reservation website complies with federal and state law requirements and points out "at least four

courts in the Ninth Circuit have already concluded the type of information provided by [defendant] … on its reservation website … fully complies with the ADA." Dkt. No. 11-1 at 5[1] (MP&A ISO Mot. to Dismiss). The Court agrees.

As such, defendant's unopposed motion is granted in full and the amended complaint is DISMISSED with prejudice.

IT IS SO ORDERED.

Dated: March 2, 2021

SUSAN ILLSTON
United States District Judge

United States District Court
Northern District of California

[1] For ease of reference, this page number citation refers to the ECF branded number in the upper right corner of the page.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAMUEL LOVE,

Plaintiff,

v.

MARRIOTT HOTEL SERVICES, INC.,

Defendant.

Case No. 20-cv-07137-TSH

ORDER GRANTING MOTION TO DISMISS

Re: Dkt. No. 16

I. INTRODUCTION

Plaintiff Samuel Love brings this case under the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101, et seq., challenging the reservation policies and practices of Defendant Marriott Hotel Services, Inc. Pending before the Court is Marriott's Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). ECF No. 16. Love filed an Opposition (ECF No. 21) and Defendant filed a Reply (ECF No. 23). The Court finds this matter suitable for disposition without oral argument and **VACATES** the March 11, 2021 hearing. *See* Civ. L.R. 7-1(b). Having considered the parties' positions, relevant legal authority, and the record in this case, the Court **GRANTS** Marriott's motion for the following reasons.

II. BACKGROUND

Love is a paraplegic who is substantially limited in his ability to walk and uses a wheelchair for mobility. First Am. Compl. ("FAC"), ¶ 1, ECF No. 13. Marriott owns and operates the San Francisco Marriott Marquis located at 780 Mission St., San Francisco, California (the "Hotel"). *Id.* ¶ 2. Love needs an accessible guestroom, and he needs to be given information about accessible features in hotel rooms so that he can confidently book those rooms and travel independently and safely. *Id.* ¶ 13.

Love "planned on making a trip in February of 2021" to the San Francisco area, and he chose the Hotel for lodging. *Id.* ¶¶ 14-15. On September 11, 2020, Love went to the reservation website at https://www.marriott.com/hotels/maps/travel/sfodt-san-francisco-marriott-marquis/ seeking to book an accessible room, but he alleges "there are very few, if any, accessible features identified for any given room." *Id.* ¶¶ 16, 18. Instead, the reservations website has an "Accessibility" tab that "provides a general list of supposedly accessible features but does not provide any actual data or information beyond a naked label of 'accessible.'" *Id.* ¶ 18. He maintains "it is nowhere near enough to permit a profoundly disabled wheelchair user to have any confidence or come to any conclusions about whether any given hotel room works for him or her." *Id.* ¶ 23. He alleges that

> because the defendant has failed to identify and describe—and/or failed to provide the necessary information to the third party operator of the website reservation system—the core accessibility features in enough detail to reasonably permit individuals with disabilities to assess independently whether a given hotel or guest room meets his accessibility needs, the defendant fails to comply with its ADA obligations and the result is that the plaintiff is unable to engage in an online booking of the hotel room with any confidence or knowledge about whether the room will actually work for him due to his disability.

Id. ¶ 32. Love would like to patronize the Hotel but is deterred from doing so "because of the lack of detailed information through the hotel's reservation system. *Id.* ¶ 37.

Love filed this case on October 14, 2020 and filed an amended complaint on January 4, 2021. He brings claims (1) under the ADA, alleging Marriott's failure to ensure its reservation policies and procedures identify and describe accessible features in the hotels and guest rooms in enough detail to reasonably permit individuals with disabilities to assess independently whether a given hotel or guest room meets his or her accessibility needs, and (2) under the California Unruh Civil Rights Act, which provides that a violation of the ADA is a violation of the Unruh Act. Cal. Civ. Code § 51(f). He seeks injunctive relief, compelling Marriott to comply with the ADA and Unruh Act, damages under the Unruh Act, and attorney's fees and costs.

Marriott filed the present motion on January 21, 2021, arguing that at least four courts in the Ninth Circuit have already concluded that the type of information provided on its reservations

website fully complies with the ADA, and that commentary from the U.S. Department of Justice ("DOJ") makes clear the Hotel has provided all the information that is required.

III. LEGAL STANDARD

A complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Thus, to survive a Rule 12(b)(6) motion to dismiss, a complaint must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Plausibility does not mean probability, but it requires "more than a sheer possibility that a defendant has acted unlawfully." *Ashcroft v. Iqbal*, 556 U.S. 662, 687 (2009). A complaint must therefore provide a defendant with "fair notice" of the claims against it and the grounds for relief. *Twombly*, 550 U.S. at 555 (quotations and citation omitted); Fed. R. Civ. P. 8(a)(2) (A complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief."). In considering a motion to dismiss, the court accepts factual allegations in the complaint as true and construes the pleadings in the light most favorable to the nonmoving party. *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008).; *Erickson v. Pardus*, 551 U.S. 89, 93-94 (2007). However, "the tenet that a court must accept a complaint's allegations as true is inapplicable to threadbare recitals of a cause of action's elements, supported by mere conclusory statements." *Iqbal*, 556 U.S. at 678.

If a Rule 12(b)(6) motion is granted, the "court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts." *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (citations and quotations omitted). However, a court "may exercise its discretion to deny leave to amend due to 'undue delay, bad faith or dilatory motive on part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party . . ., [and] futility of amendment.'" *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 892–93 (9th Cir. 2010) (alterations in original) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

IV. REQUESTS FOR JUDICIAL NOTICE

As part of its motion, Marriott requests the Court take judicial notice of the following documents:

1) A copy of the "Landing page" and Accessibility Tab of Marriott's website, https://www.marriott.com/hotels/travel/sfodt-san-francisco-marriott-marquis/ (Ex. 1).

2) A copy of the relevant pages from Marriott's website showing the various accessible room descriptions (Ex. 2).

3) A list of Love's cases filed in California federal court from PACER (Ex. 3).

4) A copy of relevant pages from the online building permit records for Marriott's Hotel from the public website of San Francisco government, https://sfplanninggis.org/pim/?pub=true (Ex. 4)

5) The Consent Decree in *United States v. Hilton Worldwide Inc.*, No. 10-cv-1924, ECF No. 5 (D.D.C. Nov. 29, 2010) (Ex. 5).

Request for Judicial Notice ("RJN"), ECF No. 16-2. As part of its reply, Marriott requests the Court take judicial notice of the following additional documents:

1) A copy of the Order Dismissing Complaint with Prejudice, *Arroyo v. JWMFE Anaheim, LLC*, Case No. 8::21-cv-00014-CJC-KES (C.D. Cal. Feb. 16, 2021).

2) A copy of the Accessibility Page of JWMFE Anaheim's Marriott website, https://www.marriott.com/hotels/fact-sheet/travel/laxoc-fairfield-anaheim-resort/#accessibil

3) A copy of the Order Dismissing Complaint with Prejudice, *Salinas v. Apple Ten SPE Capistrano, LLC*, Case No. 8:20-cv-02379-CJC-DFM (C.D. Cal. Feb. 18, 2021).

Love requests the Court not grant the request for judicial notice regarding his litigation history on the basis that it is not relevant to the issues before the Court. Opp'n at 2.

In general, the Court may not look beyond the four corners of a complaint in ruling on a Rule 12(b)(6) motion, except for documents incorporated into the complaint by reference and any relevant matters subject to judicial notice. *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007) (per curiam); *Lee v. City of L.A.*, 250 F.3d 668, 688-89 (9th Cir. 2001). The Court may take

judicial notice of matters that are either (1) generally known within the trial court's territorial jurisdiction or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b).

Proper subjects of judicial notice when ruling on a motion to dismiss include court documents already in the public record and documents filed in other courts. *Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006). Thus, Reply Exhibits 1 and 3, and Motion Exhibit 5 are the proper subjects of judicial notice. As to Exhibit 3, the Court finds a list of Love's other cases is the proper subject of judicial notice, but it is not relevant here.

Websites and their contents may also be proper subjects for judicial notice. *Threshold Enterprises Ltd. v. Pressed Juicery, Inc.*, 445 F. Supp. 3d 139, 146 (N.D. Cal. 2020) (and cases cited therein); *Wible v. Aetna Life Ins. Co.*, 375 F. Supp. 2d 956, 965 (C.D. Cal. 2005) (recognizing that "websites and their contents may be proper subjects for judicial notice" where party "supplied the court with hard copies of the actual web pages of which they sought to have the court take judicial notice). Further, under the doctrine of incorporation by reference, the Court may consider not only documents attached to the complaint, but also documents whose contents are alleged in the complaint, provided the complaint "necessarily relies" on the documents or contents thereof, the document's authenticity is uncontested, and the document's relevance is uncontested. *Coto Settlement v. Eisenberg*, 593 F.3d 1031, 1038 (9th Cir. 2010); *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003) ("Even if a document is not attached to a complaint, it may be incorporated by reference into a complaint if the plaintiff refers extensively to the document or the document forms the basis of the plaintiff's claim."). "The defendant may offer such a document, and the district court may treat such a document as part of the complaint, and thus may assume that its contents are true for purposes of a motion to dismiss under Rule 12(b)(6)." *Ritchie*, 342 F.3d at 908. The purpose of this rule is to "prevent plaintiffs from surviving a Rule 12(b)(6) motion by deliberately omitting documents upon which their claims are based." *Swartz*, 476 F.3d at 763 (internal marks omitted).

Here, Motion Exhibits 1 and 2 and Reply Exhibit 2 are publicly-accessible web pages, and they are expressly cited and relied upon in Love's complaint. FAC ¶¶ 18-20. Accordingly, the

Court may consider these documents in evaluating Marriott's motion. *Barnes v. Marriott Hotel Servs., Inc.*, 2017 WL 635474, at *4 (N.D. Cal. Feb. 16, 2017) (taking judicial notice of pages of Marriott's website in website accessibility claim). Exhibit 4 is a copy of the online building permit records from the San Francisco government website for the Hotel. Because it is an official government record from a government website, the Court may take judicial notice of it. *Cota v. Maxwell-Jolly*, 688 F. Supp. 2d 980, 998 (N.D. Cal. 2010) ("The Court may properly take judicial notice of the documents appearing on a governmental website.").

As this information is not subject to reasonable dispute, the Court **GRANTS** Marriott's request and takes judicial notice of these matters.

V. DISCUSSION

A. Love's ADA Claim

Title III of the ADA prohibits discrimination in places of public accommodation on the basis of disability, including websites. 42 U.S.C. § 12182(a); *Robles v. Domino's Pizza, LLC*, 913 F.3d 898, 905 (9th Cir.), *cert. denied*, 140 S. Ct. 122 (2019). As Ninth Circuit precedent makes clear, Love can pursue injunctive relief even if he did not actually visit the Hotel. *See Civil Rights Educ. & Enf't Ctr. v. Hosp. Props. Tr.*, 867 F.3d 1093, 1099 (9th Cir. 2017). To succeed on a discrimination claim under Title III of the ADA, a plaintiff must show that "(1) [s]he is disabled within the meaning of the ADA; (2) the defendant is a private entity that owns, leases, or operates a place of public accommodation; and (3) the plaintiff was denied public accommodation by the defendant because of [her] disability." *Arizona ex rel. Goddard v. Harkins Amusement Enters., Inc.*, 603 F.3d 666, 670 (9th Cir. 2010). Marriott does not dispute the first two elements. The third element is satisfied when the plaintiff can show a violation of accessibility standards. *Rodriguez v. Barrita, Inc.*, 10 F. Supp. 3d 1062, 1073 (N.D. Cal. 2014).

Love contends that Marriott's reservation system violates 28 C.F.R. § 36.302(e). That section requires that a "public accommodation that owns, leases (or leases to), or operates a place of lodging" must comply with a number of requirements "with respect to reservations made by

any means," including when such reservations are made through a third-party.[1] In particular, § 36.302(e)(1)(ii) requires that public accommodations "[i]dentify and describe accessible features in the hotels and guest rooms offered through its reservations service in enough detail to reasonably permit individuals with disabilities to assess independently whether a given hotel or guest room meets his or her accessibility needs."

Love contends Marriott's reservation system violates § 36.302(e) because the website does not provide sufficient detail about accessible features to allow a wheelchair user to make an independent assessment of whether these features would meet his needs. FAC ¶ 43. He suggests that more detailed descriptions of rooms or features would be appropriate, including whether there is at least 30 inches width on the side of the bed so his wheelchair can pull up next to the bed for transfer, whether the desk where he will eat and work has sufficient knee and toe clearance, whether he can transfer to and use the toilet, whether the restroom sink provides appropriate knee clearance, whether the restroom mirror is mounted at a lowered height so that wheelchair users can use it, and what type of shower is available and whether it has an in-shower seat grab bars mounted on the walls, and a detachable hand-held shower wand. *Id.* ¶ 29.

In response, Marriott points to an Appendix to the regulations, 28 C.F.R. Pt. 36, App. A, in which the DOJ provides the following commentary regarding accessibility information required under the regulations:

---

[1] (1) Reservations made by places of lodging. A public accommodation that owns, leases (or leases to), or operates a place of lodging shall, with respect to reservations made by any means, including by telephone, in-person, or through a third party-

> (i) Modify its policies, practices, or procedures to ensure that individuals with disabilities can make reservations for accessible guest rooms during the same hours and in the same manner as individuals who do not need accessible rooms;
>
> (ii) Identify and describe accessible features in the hotels and guest rooms offered through its reservations service in enough detail to reasonably permit individuals with disabilities to assess independently whether a given hotel or guest room meets his or her accessibility needs;
>
> (iii) Ensure that accessible guest rooms are held for use by individuals with disabilities until all other guest rooms of that type have been rented and the accessible room requested is the only remaining room of that type . . ..

28 C.F.R. § 36.302(e).

> The Department recognizes that a reservations system is not intended to be an accessibility survey. However, specific information concerning accessibility features is essential to travelers with disabilities. Because of the wide variations in the level of accessibility that travelers will encounter, the Department cannot specify what information must be included in every instance. For hotels that were built in compliance with the 1991 Standards, it may be sufficient to specify that the hotel is accessible and, for each accessible room, to describe the general type of room (e.g., deluxe executive suite), the size and number of beds (e.g., two queen beds), the type of accessible bathing facility (e.g., roll-in shower), and communications features available in the room (e.g., alarms and visual notification devices). Based on that information, many individuals with disabilities will be comfortable making reservations.
>
> For older hotels with limited accessibility features, information about the hotel should include, at a minimum, information about accessible entrances to the hotel, the path of travel to guest check-in and other essential services, and the accessible route to the accessible room or rooms.

28 C.F.R. Pt. 36, App. A, "Title III Regulations 2010 Guidance and Section-by-Section Analysis" (the "2010 Guidance"); *see also* Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, 75 FR 56,236, 56,274 (Sept. 15, 2010) (to be codified at 28 C.F.R. pt. 36).[2]

The DOJ's explanation sets forth four key principles: (1) "a reservations system is not intended to be an accessibility survey"; (2) "it may be sufficient to specify that the hotel is accessible and, for each accessible room, to describe the general type of room (e.g., deluxe executive suite), the size and number of beds (e.g., two queen beds), the type of accessible bathing facility (e.g., roll-in shower), and communications features available in the room (e.g., alarms and visual notification devices)"; (3) "[f]or older hotels with limited accessibility features, information about the hotel should include, at a minimum, information about accessible entrances to the hotel, the path of travel to guest check-in and other essential services, and the accessible route to the accessible room or rooms"; and (4) "[f]or older hotels, information about important features that do not comply with the 1991 Standards." 28 C.F.R. Pt. 36, App. A. The DOJ guidance is "entitled to substantial deference." *Kohler v. Presidio Int'l, Inc.*, 782 F.3d 1064, 1069 (9th Cir.

[2] Also available online at https://www.ada.gov/regs2010/titleIII_2010/titleIII_2010_regulations.htm#a2010guidance.

2015) (DOJ's guidance interpreting requirements of the ADA is "entitled to substantial deference") (internal quotation marks and citation omitted); *Robles*, 913 F.3d at 904 ("DOJ's administrative guidance on ADA compliance is entitled to deference") (citing *Bragdon v. Abbott*, 524 U.S. 624, 646 (1998)); *Fortyune v. City of Lomita*, 766 F.3d 1098, 1104 (9th Cir. 2014) ("The DOJ's interpretation of its ADA implementing regulations is entitled to controlling weight unless it is plainly erroneous or inconsistent with the regulation.") (internal quotation marks and citations omitted).

Based on Love's own allegations and the evidence provided by Marriott, the Court finds Marriott provides accessible features descriptions that exceed the level of detail proposed by the ADA guidance. Although the FAC asserts that the website "does not provide any actual data" about the accessibility features offered by the Hotel, Love attached a copy of portions of Marriott's website into his FAC that contradict his allegation. For example, the room description of Love's room, copied and pasted into his complaint, confirms that the room provides: "Accessible guest rooms with 32" wide doorways," "Accessible route from public entrance to accessible guest rooms," "Alarm clock telephone ringers," "Bathroom grab bars," "Bathtub grab bars Bathtub seat," "Deadbolt locks, lowered," "Door night guards, lowered," "Doors with lever handles," "Electrical outlets, lowered," "Flashing door knockers," "Hearing accessible rooms and/or kits," "Roll-in shower," "Shower wand, adjustable," "TTY/TTD available," "TV with close-captioning," "Toilet seat at wheelchair height," "Transfer shower," "Vanities, accessible," "Viewports, lowered." FAC ¶ 20. The Hotel website, as quoted by Love, further confirms other "Accessible Hotel Features" including "Accessible Self-parking," "Self-parking, accessible spaces," "Service animals are welcome," "Elevators," and "Accessible Routes from Public Entrance" to all areas of the Hotel including the "Business Center," "Fitness Center," "Meeting spaces and ballrooms," "Public entrance alternative," "Registration Desk Pathway," and "Registration desk," "Restaurant(s)/Lounge(s). *Id.* ¶¶ 18-19. The Court finds these descriptions and this level of detail is appropriate and acceptable. Previous decisions confirm as much. In *Barnes*, the plaintiff argued that Marriott's reservation system violated 28 C.F.R. § 36.302(e) "because the website does not provide sufficient detail about accessible features to allow a

wheelchair user to make an independent assessment of whether these features would meet her needs." 2017 WL 635474, at *9. The court noted that Marriott's website described "Accessible Room Features" for individual room types: "[t]his room type offers mobility accessible rooms[;] [t]his room type offers accessible rooms with roll in showers[.]". *Id.* (alterations in original). It found "this level of detail is appropriate and acceptable" under the guidelines and granted summary judgment in Marriott's favor. *Id.* at *10. The information provided by Marriott in this case (and by Love in his FAC) is far more extensive than the information provided in *Barnes*.

In *Strojnik v. Orangewood,* 2020 U.S. Dist. LEXIS 11743 (C.D. Cal. January 22, 2020), *aff'd Strojnik v. Orangewood LLC,* 829 F. App'x 783 (9th Cir. 2020), the court rejected another ADA litigant's claim that the website contained insufficient information. "A website need not list its compliance or non-compliance with every [ADA Standards for Accessible Design] provision to satisfy 28 C.F.R. § 36.302(e)(ii)." *Id.* at *20-22. The court noted that the guidance on this provision "recognizes that a reservations system is not intended to be an accessibility survey," and "[b]ecause of the wide variations in the level of accessibility that travelers will encounter . . . it may be sufficient to specify that the hotel is accessible" and to provide basic facts about each accessible room. *Id.* at *20-21 (citing 28 C.F.R. § Pt. 36, App. A). It also noted "the DOJ acknowledges that 'individuals with disabilities may wish to contact the hotel or reservations service for more detailed information.'" *Id.* at *21 (citing 28 C.F.R. § Pt. 36, App. A). In granting the defendant's motion to dismiss without leave to amend, the court held "that websites need not include all potentially relevant accessibility information; if a website was required to have all relevant information, individuals would not need to call the hotel to get further information." *Id.*

In *Strojnik v. Kapalua Land Company*, the court rejected the plaintiff's contention that insufficient information on a website constituted an actionable ADA violation that actually denied him equal access to the hotel property. 2019 WL 4685412 (D. Haw. Aug. 26, 2019), *aff'd*, 801 F. App'x 531 (9th Cir. 2020). There, the court held that "the facts alleged in support of Plaintiff's ADA claim relate to his inability to obtain facts about the Property, not the goods and services" provided at the defendant's hotel. *Id.* at *6. The court noted that "Plaintiff fails to cite to any legal authority providing that failure to detail all accessible and inaccessible elements of a public

accommodation results in an ADA violation." *Id.* at *7. In recommending dismissal without leave to amend, the court found the plaintiff failed to allege an actionable violation of the ADA because "there is a critical distinction 'between an inability to use a website to gain information about a physical location and an inability to use a website that impedes access to enjoy a physical location,' the former being "insufficient to state a claim." *Id.* (citing *Price v. Everglades Coll., Inc.*, 2018 WL 3428156, at *2 (M.D. Fla. July 16, 2018)).

Other courts have also made clear that the regulations are not intended to be an accessibility survey. *See Strojnik v. 1315 Orange LLC*, 2019 WL 5535766, at *2 (S.D. Cal. Oct. 25, 2019) (Plaintiff "does not cite any authority suggesting a hotel has an obligation to describe to the public the physical layout of its rooms in exhaustive detail without being asked"); *Rutherford v. Evans Hotels, LLC*, 2020 WL 5257868, at *17 (S.D. Cal. Sept. 3, 2020) ("Mr. Rutherford testified that the Websites described rooms as being 'accessible,' some even 'in some detail.' But just because Mr. Rutherford would like additional detail does not mean that he is entitled to it under Section 36.302(e)(1)(ii)."") (dismissing complaint for lack of standing (transcript citations omitted).

As noted above, Marriott's website includes a level of detail well beyond what was deemed to be sufficient in these cases. First, there are Love's allegations in FAC, ¶¶ 18-20, which on their own are sufficiently detailed to establish that there is no ADA violation. Second, there is the Hotel's Accessibility section on its website, which gives a virtual Accessibility Survey of both the rooms and the property. RJN, Ex. 1. If a guest requires additional information "about the physical features of our accessible rooms, common areas, or special services relating to a specific disability," they are invited to "call +1 415-896-1600." Based on the DOJ's guidance and cases discussed above, the Court finds this is more than sufficient.

Second, the 2010 Guidance cited above makes clear that details about a hotel's accessible features - "such as the specific layout of the room and bathroom, shower design, grab-bar locations, and other amenities available (e.g., bathtub bench)" can be provided "once reservations are made" and do not have to be provided on the reservations website. *See* 28 C.F.R. Pt. 36, App. A, "Title III Regulations 2010 Guidance and Section-by-Section Analysis." This alone shows that

the very type of specificity that Love desires in this case is not required on a website. "This provides further support that websites need not include all potentially relevant accessibility information; if a website was required to have all relevant information, individuals would not need to call the hotel to get further information." *Orangewood LLC*, 2020 U.S. Dist. LEXIS 11743, at *21. Love refers to the 2010 Guidance "musings by the DOJ," Opp'n at 4, but, as noted above, the DOJ's guidance is entitled to substantial deference. *Kohler*, 782 F.3d at 1069.

The DOJ's enforcement position in litigation about the accessibility guidelines further reinforces the sufficiency of the website's information. *See* RJN, Ex. 5 (Consent Decree in *United States v. Hilton Worldwide, Inc.*, No. 10-cv-1924, ECF No. 5 (D.D.C. Nov. 29, 2010). In the HWI litigation, the DOJ alleged, inter alia, that the defendant's online reservations system did not "accurately reflect the inventory of accessible types of rooms and amenities available at each property[.]" HWI Consent Decree ¶ 8(c). The consent decree was entered to resolve the DOJ's ADA enforcement action involving a "system of more than 2,800 hotels throughout the United States . . . ." *Id.* ¶ 1. Under the HWI Consent Decree, the defendant entity was obligated to ensure that its reservations system:

> [I]dentify by room type which rooms are accessible, and for each such room type, which of the following accessibility or other features it has:
> (i) Number of beds
> (ii) Size of bed(s)
> (iii) Roll-in shower or accessible tub
> (iv) Visual alarms
> (v) Executive level
> (vi) Suite
> (vii) Kitchen/kitchenette
> (viii) View, if a particular hotel charges more for a room based on the view.

Id. (HWI Consent Decree, ¶ 25(a)(i)-(viii)). In other words, the DOJ required the same guestroom accessibility information enumerated in its 2010 Guidance (and all of which is present, as applicable, on the website in the instant case). *Compare* HWI Consent Decree, ¶25(a)(i)-(viii) with 28 C.F.R. Pt. 36, App. A ("it may be sufficient . . . for each accessible room, to describe the general type of room (e.g., deluxe executive suite), the size and number of beds (e.g., two queen beds), the type of accessible bathing facility (e.g., roll-in shower), and communications features

available in the room (e.g., alarms and visual notification devices")). This is a further indication of the DOJ's consistent position concerning the accessibility information required to comply with the regulations. *See Price v. Stevedoring Servs. of Am., Inc.*, 697 F.3d 820, 832 n.8 (9th Cir. 2012) (explaining that "deference to agency litigating positions" is warranted based on "factors such as the consistency of its position and its application of that position through administrative practice"). Moreover, the court's approval of the HWI Consent Decree reflects a judicial determination that the requirements imposed were "fair, adequate, reasonable, and appropriate under the particular facts[.]" *Citizens for a Better Env't v. Gorsuch*, 718 F.2d 1117, 1126 (D.C. Cir. 1983) (quoting *Metro. Hous. Dev. Corp. v. Vill. of Arlington Heights*, 616 F.2d 1006, 1014 (7th Cir. 1980)); *accord United States v. State of Oregon*, 913 F.2d 576, 580 (9th Cir. 1990) ("Before approving a consent decree, a district court must be satisfied that it is at least fundamentally fair, adequate and reasonable . . . [i]n addition, because it is a form of judgment, a consent decree must conform to applicable laws.") (citations omitted).

Love contends "the Consent Decree never mentions the relevant regulation, never cites or uses the regulatory language, and was a settlement agreement reached in November of 2010—almost half a year before the regulation at issue in this case because effective and enforceable, i.e., March 15, 2011." However, the Consent Decree tracks the requirements of the Reservations Rule in ¶ 25, further indication of the DOJ's consistent position concerning the accessibility information required to comply with the Reservations Rule. *See Stevedoring Servs. of Am., Inc.*, 697 F.3d at 832 n.8 (explaining that "deference to agency litigating positions" is warranted based on "factors such as the consistency of its position and its application of that position through administrative practice"). Moreover, the court's approval of the HWI Consent Decree reflects a judicial determination that the requirements imposed were "fair, adequate, reasonable, and appropriate under the particular facts[.]" *Citizens for a Better Env't*, 718 F.2d at 1126 (quoting *Metro. Hous. Dev. Corp.*, 616 F.2d at 1014); *United States v. State of Oregon*, 913 F.2d at 580 ("Before approving a consent decree, a district court must be satisfied that . . . a consent decree must conform to applicable laws.") (internal citations omitted).

In sum, the Court finds Marriott's website complies with the regulations. As discussed

above, the Accessibility section of the website not only provides the information contemplated by the 2010 Guidance ("information about accessible entrances to the hotel, the path of travel to guest check-in and other essential services, and the accessible route to the accessible room or rooms,"28 C.F.R. Pt. 36, App. A), but also detailed descriptions of the guest rooms' accessibility features. Indeed, the information provided under the website's accessibility tab goes beyond the 2010 Guidance. Accordingly, the Court finds Love fails to state a claim under the ADA for which relief can be granted and the first cause of action must be dismissed. As Love's pleading could not be cured by the allegation of other facts, the Court finds leave to amend would be futile.

B. Supplemental Jurisdiction

The Court, under 28 U.S.C. § 1367(c), may decline to exercise supplemental jurisdiction under circumstances that include when "the district court has dismissed all claims over which it ha[d] original jurisdiction[.]" 28 U.S.C. § 1367(c)(3). As the Court has dismissed the only federal claim before it, which provided the only basis for its original jurisdiction, the Court will exercise its discretion to decline jurisdiction over the remaining state law claims.

VI. CONCLUSION

For the reasons stated above, the Court **GRANTS** Marriott's motion to dismiss. As leave to amend would be futile, dismissal is **WITHOUT LEAVE TO AMEND**.

IT IS SO ORDERED.

Dated: March 3, 2021

THOMAS S. HIXSON
United States Magistrate Judge

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

Case No.	CV 20-11699 PA (PDx)	Date	March 15, 2021
Title	Orlando Garcia v. Chamber Maid L.P. et al.		

Present: The Honorable	PERCY ANDERSON, UNITED STATES DISTRICT JUDGE	
Kamilla Sali-Suleyman	Not Reported	N/A
Deputy Clerk	Court Reporter	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:	
None	None	

Proceedings: IN CHAMBERS - COURT ORDER

Before the Court is a Motion to Dismiss filed by defendants Chamber Maid L.P. and Chamber Maid Lessee, L.P. ("Defendants"). (Dkt. 13 ("Mot.").) As of today's date, Plaintiff Orlando Garcia ("Plaintiff") has not filed an Opposition. Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds this matter appropriate for decision without oral argument.

I. Background

Plaintiff suffers from cerebral palsy and uses a wheelchair, walker, or cane for mobility. (Dkt. 1, Ex. A ("Compl.") ¶1.) Plaintiff planned on making a trip in January 2021 to West Hollywood, California. (Id. at ¶12.) Plaintiff chose the Chamberlain West Hollywood Hotel, located at 1000 Westmount Dr., West Hollywood, California, because this hotel was at a desirable price and location. (Id. at ¶13.) Defendant Chamber Maid, L.P. owns the hotel and defendant Chamber Maid Lessee, Inc. operates the hotel. (Id. at ¶2.) Because of Plaintiff's disability, he needs a compliant accessible guestroom that includes: clearance around beds, accessible restroom facilities (i.e., sinks, toilets, and tubs or showers), sufficient maneuvering clearance in and around the guestroom, and accessories located within an accessible reach range. (Id. at ¶14.)

Plaintiff alleges that he "does not know if any physical or architectural barriers exist at the hotel and, therefore, is not claiming that [] the hotel has violated any construction-related accessibility standard. " (Id. at ¶7.) Instead, Plaintiff's claims are based on a "lack of information provided on the hotel's reservation website that would permit plaintiff to determine if there are rooms that would work for him." (Id.) On November 10, 2020, Plaintiff went to the hotel's reservation website[1/] to book an accessible room and found that "there was little information about the accessibility of the rooms." (Id. at ¶16.) For example, under the "Accessibility" tab, it mentions features such as: "Accessibility guest rooms with mobility features with entry or passage doors that provide 32" of clear width," "Mobility and hearing accessible," "Roll in shower," "Grab bars," "Roll under sink," "accessible bathtub," "Lowered bathroom fixtures," "Accessible desk," "Accessible hotel restaurant," and "Required clear width for pathway." (Id.) Plaintiff contends that "[t]hese vague and conclusory statements do not contain enough information to assess if the room and hotel are accessible." (Id. at ¶17; see also ¶18.) The lack of

[1/] See https://www.chamberlainwesthollywood.com.

information created difficulty for Plaintiff, and the idea of trying to book this room caused him discomfort. (Id. at ¶19.) Plaintiff would like to patronize this hotel but is deterred from doing so because of the lack of detailed information on the hotel's reservation system. (Id. at ¶20.)

On November 19, 2020, Plaintiff commenced this action in the Superior Court of California for Los Angeles County, Case No. 20SMCV01811. Plaintiff's Complaint raises two claims for relief: (1) violation of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. ("ADA"); and (2) violation of the California Unruh Civil Rights Act, Cal. Civ. Code §§ 51-53. On December 29, 2020, Defendants filed a Notice of Removal in this Court. On January 4, 2021, the Court issued an Order to Show Cause as to whether the Court should continue to exercise supplemental jurisdiction over the Unruh Act claim. (Dkt. 8.) Plaintiff filed a Response on January 15, 2021. (Dkt. 10.) On February 3, 2021, the Court discharged the Order to Show Cause and stated that it will, pending further developments in the litigation, continue to exercise supplemental jurisdiction over the Unruh Act claim. (Dkt. 11.)

On February 4, 2021, the Court issued an Order to Show Cause why this action should not be dismissed for lack of prosecution. (Dkt. 12.) On February 16, 2021, Plaintiff filed a Response to the Court's Order to Show Cause. (Dkt. 16.) Plaintiff's counsel declares: "The Defendant filed a Motion to Dismiss on February 5, 2021 (Dkt. 13); the Court accepted the document as filed February 10, 2021. (Dkt. 15.) In light of this submission, Plaintiff respectfully requests that the Court discharge the current show cause Order." (Id. at ¶¶8-9.) On March 1, 2020, the Court discharged its order to show cause regarding lack of prosecution. (Dkt. 18.) As of today's date, Plaintiff has not filed an opposition or any other response to the Motion to Dismiss.

II. Legal Standard

For purposes of a Motion to Dismiss brought pursuant to Federal Rule of Civil Procedure 12(b)(6), plaintiffs in federal court are generally required to give only "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). While the Federal Rules allow a court to dismiss a cause of action for "failure to state a claim upon which relief can be granted," they also require all pleadings to be "construed so as to do justice." Fed. R. Civ. P. 12(b)(6), 8(e). The purpose of Rule 8(a)(2) is to "'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). The Ninth Circuit is particularly hostile to motions to dismiss under Rule 12(b)(6). See, e.g., Gilligan v. Jamco Dev. Corp., 108 F.3d 246, 248–49 (9th Cir. 1997) ("The Rule 8 standard contains a powerful presumption against rejecting pleadings for failure to state a claim.") (internal quotation omitted).

However, in Twombly, the Supreme Court rejected the notion that "a wholly conclusory statement of a claim would survive a motion to dismiss whenever the pleadings left open the possibility that a plaintiff might later establish some set of undisclosed facts to support recovery." Twombly, 550 U.S. at 561 (internal quotation omitted). Instead, the Court adopted a "plausibility standard," in which

the complaint must "raise a reasonable expectation that discovery will reveal evidence of [the alleged infraction]." Id. at 556. For a complaint to meet this standard, the "[f]actual allegations must be enough to raise a right to relief above the speculative level." Id. at 555 (citing 5 C. Wright & A. Miller, Federal Practice and Procedure §1216, pp. 235–36 (3d ed. 2004) ("[T]he pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action") (alteration in original)); Daniel v. County of Santa Barbara, 288 F.3d 375, 380 (9th Cir. 2002) ("'All allegations of material fact are taken as true and construed in the light most favorable to the nonmoving party.'") (quoting Burgert v. Lokelani Bernice Pauahi Bishop Trust, 200 F.3d 661, 663 (9th Cir. 2000)).

"[A] plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Twombly, 550 U.S. at 555 (internal quotations omitted). In construing the Twombly standard, the Supreme Court has advised that "a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009).

III. Judicial Notice

Defendant asks the Court to take judicial notice of the following documents:

1. A copy of the "Landing Page" and Accessibility Tab of Defendant's website referred to in Plaintiff's Complaint (Ex. 1);

2. A list of Plaintiff's cases filed in California federal court from PACER (Ex. 2); and

3. The Consent Decree in U.S. v. Hilton Worldwide, Inc., No. 10-1924, ECF No. 5 (D.D.C. Nov. 29, 2010) (Ex. 3).

(See Dkt. 13-2.) The Court takes judicial notice of Exhibit 1, which is referenced in Plaintiff's Complaint. See Daniels-Hall v. National Educ. Ass'n, 629 F.3d 992, 998 (9th Cir. 2010) (finding district court correctly took judicial notice of information available on websites where "Plaintiffs directly quoted the material posted on these web pages, thereby incorporating them into the Complaint."). The Court does not rely on Defendant's Exhibit 2[2/] or Exhibit 3 in reaching its decision on this Motion. Therefore, the Court denies Defendant's Request for Judicial Notice as to Exhibits 2 and 3 as moot.

[2/] While the Court does not decide this Motion to Dismiss based on Plaintiff's standing, the Court does find Plaintiff's desire to visit 27 hotels in three months during the COVID-19 pandemic, when Los Angeles residents are being encouraged to stay at home, to be suspicious.

IV. Analysis

Plaintiff did not file an Opposition to the Motion to Dismiss within the deadline established by Local Rule 7-9. See Local Rule 7-9 (requiring the filing of an Opposition "not later than twenty-one (21) days before the date designated for the hearing of the motion"). Nor did Plaintiff file an Amended Complaint as allowed by Federal Rule of Civil Procedure 15(a)(1)(B) within 21 days after service of a motion under Rule 12(b). Plaintiff's failure to file an Opposition is itself sufficient grounds to grant Defendants' Motion to Dismiss. See Local Rule 7-12 ("The failure to file any required paper, or the failure to file it within the deadline, may be deemed consent to the granting or denial of the motion."). In addition, for the reasons explained below, Plaintiff has failed to state a claim under the ADA.

To succeed on a discrimination claim under Title III of the Americans with Disabilities Act "(ADA"), a plaintiff must show that "(1) he is disabled within the meaning of the ADA; (2) the defendant is a private entity that owns, leases, or operates a place of public accommodation; and (3) the plaintiff was denied public accommodation by the defendant because of his disability." Arizona ex rel. Goddard v. Harkins Amusement Enters., Inc., 603 F.3d 666, 670 (9th Cir. 2011). The third element is satisfied when the plaintiff can show a violation of accessibility standards. Rodriguez v. Barrita, Inc., 10 F. Supp. 3d 1062, 1073 (N.D. Cal. 2014). The ADA applies to websites that "impede[] access to the goods and services of . . . places of public accommodation." Robles v. Domino's Pizza LLC, 913 F.3d 898, 905 (9th Cir. 2019), cert. denied 140 S. Ct. 122 (2019).

Here, Plaintiff argues Defendant's reservation system violates 28 C.F.R. § 36.302(e). That section states:

> a place of lodging shall, with respect to reservations made by any means ... (i) Modify its policies, practices, or procedures to ensure that individuals with disabilities can make reservations for accessible guest rooms during the same hours and in the same manner as individuals who do not need accessible rooms; (ii) Identify and describe accessible features in the hotels and guest rooms offered through its reservation service in enough detail to reasonably permit individuals with disabilities to assess independently whether a given hotel or guest room meets his or her accessibility needs; (iii) Ensure that accessible guest rooms are held for use by individuals with disabilities until all other guest rooms of that type have been rented and the accessible room requested is the only remaining room of that type; (iv) Reserve, upon request, accessible guest rooms or specific types of guest rooms and ensure that the guest rooms requested are blocked and removed from all reservations systems; and (v) Guarantee that the specific accessible guest room reserved through its reservation service is held for the reserving customer, regardless of whether a specific room is held in response to reservations made by others.

Plaintiff argues Defendant's reservation system violates Section 36.302(e) because the website does not provide sufficient detail about accessible features to allow Plaintiff, a wheelchair user, to make

an independent assessment of whether these features would meet his needs. Plaintiff suggests that more detailed descriptions of the room's features are needed, such as: whether the roll in shower is accessible, the toilet is the correct height, the sink has enough clearance under it, the bedroom has compliant clear floor space, the table/desk is accessible, and whether the pathways in the restaurant are accessible. (Compl. ¶¶16-17.)

Defendant, in turn, points to a 2010 guidance document from the Department of Justice ("DOJ") entitled "Americans with Disabilities Act Title III Regulations: Nondiscrimination on the Basis of Disability by Public Accommodation and in Commercial Facilities." The DOJ document states that "[f]or hotels that were built in compliance with the 1991 Standards, it may be sufficient to specify that the hotel is accessible and, for each accessible room, to describe the general type of room (e.g., deluxe executive suite), the size and number of beds (e.g., two queen beds), the type of accessible bathing facility (e.g., roll-in shower), and communications features available in the room (e.g., alarms and visual notification devices). Based on that information, many individuals with disabilities will be comfortable making reservations."

This Court agrees with Defendant that, based on the allegations in Plaintiff's FAC and the judicially noticeable documents, the descriptions and level of detail provided on Defendant's website are sufficient to comply with the ADA. "[A] website need not list its compliance or non-compliance with every [ADA] Accessibility Guidelines ("ADAAG")] provision to satisfy 28 C.F.R. § 36.302(e)(iii)." Strojnik v. Orangewood LLC, 19-cv-00946, 2020 U.S. Dist. LEXIS 11743, at *20 (C.D. Cal. Jan. 22, 2020). The 2010 DOJ ADAAG Guidance on this provision "recognizes that a reservations system is not intended to be an accessibility survey," and "[b]ecause of the wide variations in the level of accessibility that travelers will encounter . . . it may be sufficient to specify that the hotel is accessible" and to provide basic facts about each accessible room." That is exactly what Defendant does here. Defendant provides Plaintiff notice that it has accessible rooms. While Plaintiff may have alleged that claiming something is "accessible" is a conclusion or opinion, the term "accessible" is specifically defined in the ADAAG to describe "a site, building, facility, or portion thereof that complies with these guidelines." 1991 ADAAG § 3.5. Thus, the Defendant's use of the term "accessible" is not merely conclusory, it means that the features in the hotel defined by Defendant as "accessible" comply with the ADAAG.

Other courts have reached the same conclusion. For example, in Rutherford v. Evans Hotels, LLC, the Court found Plaintiff's "contention that '[c]ommon sense dictates that conclusorily stating that its rooms are 'accessible' is not enough detail for Plaintiffs to assess whether a hotel or guest room meets their particular accessibility needs' . . . is dubious." CV 18-00435, 2020 WL 5257868, at * 16 (S.D. Cal. Sept. 3, 2020). The Court pointed to the DOJ's own guidance, which states it may be sufficient to specify that the hotel is accessible and to describe the general type of room. (Id.) The Court concluded that "[j]ust because Mr. Rutherford would like additional detail does not mean that he is entitled to it under Section 26.302(e)(1)(iii)." Id.; see also Strojnik, 2020 U.S. Dist. LEXIS 11743, at *20 ("[E]ven had Plaintiff identified information that was missing from the website that related to his disability, a website need not list its compliance or non-compliance with every ADAAG provision to satisfy 28 C.F.R. § 36.302(e)(iii)."); Barnes v. Marriott Hotel Servs., CV 15-01409, 2017 WL 635474, at *10 (N.D. Cal. Feb. 16, 2017) (finding descriptions of rooms stating "[t]his type of room offers mobility

accessible rooms" or "[t]his type of room offers accessible rooms with roll in showers" provided the "appropriate and acceptable" level of detail to comply with section 36.302(e)); Strojnik v. Kapalua Land Co., Ltd., CV 19-1991, 2019 WL 5535766, at *7 (D. Haw. Aug. 26, 2019) ("Plaintiff fails to cite to any legal authority providing that failure to detail all accessible and inaccessible elements of a public accommodation results in an ADA violation."). Thus this Court finds, as other courts have already found, that describing a room as "accessible" is sufficient to comply with the ADAAG.

Finally, should Plaintiff or any other potential guest require additional information than what is on the hotel's website, they are advised: "Should you have further questions about accessibility, we would be happy to accommodate your needs and can be reached by phone or email." (Def.'s RJN Ex. 1.) Both "phone" and "email" are hot links directly to the phone number and email address for the hotel. (Mot. at 9.) The DOJ acknowledges that "individuals with disabilities may wish to contact the hotel or reservations services for more detailed information." 28 C.F.R. § Pt. 36, App. A. Courts have interpreted this to mean that a website need not include all potentially relevant accessibility information where an inquiring patron can simply call the hotel for more information. See Strojnik, 2020 U.S. Dist. LEXIS 11743, at *21 ("if a website was required to have all relevant information, individuals would not [be directed by the DOJ] to call the hotel to get further information."). Thus, for this additional reason, the Court finds Plaintiff has failed to state a claim that Defendant's website violates the ADA.

For all of the reasons discussed above, the Court finds that Plaintiff has failed to state a claim under the ADA. The Court therefore grants Defendants' Motion to Dismiss as to the ADA claim. As for Plaintiff's Unruh Act claim, the Court may decline to exercise supplemental jurisdiction over all remaining state law claims because "the district court has dismissed all claims over which it has original jurisdiction." 28 U.S.C. § 1367(c)(3). "[I]n the usual case in which federal law claims are eliminated before trial, the balance of factors . . . will point toward declining to exercise jurisdiction over the remaining state law claims." Reynolds v. Cnty. of San Diego, 84 F.3d 1162, 1171 (9th Cir. 1996) overruled on other grounds by Acri v. Varian Assocs., Inc., 114 F.3d 999, 1001 (9th Cir. 1997) ("The Supreme Court has stated, and we have often repeated, that in the usual case in which all federal-law claims are eliminated before trial, the balance of factors . . . will point toward declining to exercise jurisdiction over the remaining state-law claims.") (quotations and citation omitted); see also De La Torre v. CashCall, Inc., 2019 U.S. Dist. LEXIS 18624, at *12 (N.D. Cal. Feb. 5, 2019) ("The elimination of federal claims does not automatically deprive district courts of subject matter jurisdiction over any supplemental state law claims. . . . However, [c]omity and precedent in this circuit strongly disfavors exercising supplemental jurisdiction.") (quotations and citations omitted). Here, the Court has dismissed the ADA claim and there are no other federal claims in the Complaint. The Court therefore declines to excise supplemental jurisdiction over Plaintiff's remaining state law claim under the Unruh Civil Rights Act. This claim is dismissed without prejudice.

Conclusion

Plaintiff has failed to adequately state a claim that Defendant's website violates the ADA. In addition, based on Plaintiff's own FAC and the judicially noticed documents, Defendant's website does comply with the ADA. Therefore, any future amendment to Plaintiff's ADA claim would be futile. The

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

Case No.	CV 20-11699 PA (PDx)	Date	March 15, 2021
Title	Orlando Garcia v. Chamber Maid L.P. et al.		

Court therefore dismisses Plaintiff's ADA claim without leave to amend. The Court declines to excise supplemental jurisdiction over Plaintiff's remaining state law claim under the Unruh Civil Rights Act. This claim is dismissed without prejudice. The Court will issue a separate Judgment consistent with this order.

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

RAFAEL ARROYO,

Plaintiff,

v.

AJU HOTEL SILICON VALLEY LLC, et al.,

Defendants.

Case No. 20-cv-08218-JSW

ORDER GRANTING MOTION TO DISMISS

Re: Dkt. No. 19

Now before the Court for consideration is the motion to dismiss for failure to state a claim filed by Defendants AJU Hotel Silicon Valley, LLC and AJU Hotel San Jose II, LLC ("Defendants"). The Court has considered the parties' papers, relevant legal authority, and the record in this case, and it finds this matter suitable for disposition without oral argument. *See* N.D. Civ. L.R. 7-1(b). The Court HEREBY VACATES the hearing scheduled for March 19, 2021 at 9:00 a.m. For the following reasons, the Court GRANTS Defendants' motion.

BACKGROUND

Plaintiff is a paraplegic and uses a wheelchair for mobility. (Dkt. No. 1, ("Compl.") ¶ 1.) Defendants own and operate the Westin San Jose Hotel ("Westin"). (*Id.* ¶ 2.) Plaintiff alleges that in April 2021, he planned to make a trip to San Jose, California, and chose to stay at the Westin because of its price and location. (*Id.* ¶ 13.) When Plaintiff visited Westin's website to reserve a room, he found that the website did not provide detailed information about the accessibility of the rooms. (*Id.* ¶ 15.) Because the website's reservation system did not describe the accessible features in the guestroom with enough detail, Plaintiff alleges he was unable to assess whether a particular guestroom met his needs and felt uncomfortable trying to book a room. (*Id.* ¶¶ 17-18.) Plaintiff alleges that he would like to patronize the hotel but is deterred from doing so because the

hotel's reservation system lacks information about the accessibility of guestrooms, which prevents him from determining if the Westin has rooms that would be suitable for him. (*Id.* ¶ 19.) Plaintiff brings causes of actions for violations of the Americans with Disabilities Act, 42 U.S.C. section 12101, *et seq.*("ADA"), and the Unruh Civil Rights Act, Cal. Civ. Code section 51-53 ("Unruh Act"). (*Id.* ¶¶ 20-27.) He seeks injunctive relief and damages.

ANALYSIS

A. Applicable Legal Standard.

A motion to dismiss is proper under Federal Rule of Civil Procedure 12(b)(6) where the pleadings fail to state a claim upon which relief can be granted. The Court's "inquiry is limited to the allegations in the complaint, which are accepted as true and construed in the light most favorable to the plaintiff." *Lazy Y Ranch LTD v. Behrens*, 546 F.3d 580, 588 (9th Cir. 2008). Even under the liberal pleading standard of Federal Rule of Civil Procedure 8(a)(2), "a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell At. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)).

Pursuant to *Twombly*, a plaintiff must not merely allege conduct that is conceivable but must instead allege "enough facts to state a claim to relief that is plausible on its face." *Id.* at 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556). If the allegations are insufficient to state a claim, a court should grant leave to amend, unless amendment would be futile. *See, e.g., Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296 (9th Cir. 1990); *Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv., Inc.*, 911 F.2d 242, 246-47 (9th Cir. 1990).

B. The Court Grants Defendants' Request for Judicial Notice.

Defendants ask the Court to take judicial notice of several documents submitted in connection with their motion to dismiss and reply. (*See* Dkt. 19-2, Request for Judicial Notice ("RJN"); Dkt. No. 23-1, Supplemental Request for Judicial Notice ("Supp. RJN").) Plaintiff does not oppose Defendants' requests.

Exhibits 1 and 2 are copies of the landing page of Defendants' website, including the accessibility tab, and the room descriptions. Courts may take judicial notice of websites and their contents. *Threshold Enterprises Ltd. v. Pressed Juicery, Inc.*, 445 F. Supp. 3d 139, 146 (N.D. Cal. 2020) (citing cases). Furthermore, the Court may consider the website pages under the doctrine of incorporation by reference because they are "document[s] whose contents are alleged in the complaint" and on which the complaint necessarily relies. *See United States v. Ritchie*, 342 F. 3d 903, 908 (9th Cir. 2003). Accordingly, the Court takes judicial notice of Exhibits 1 and 2.

Defendants also ask the Court to take judicial notice of three district court opinions addressing similar issues and involving Plaintiff or Plaintiff's counsel. Documents in the public record and documents filed in other courts are proper subjects of judicial notice. *Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006). Accordingly, the Court takes judicial notice of Exhibits 1-3 of Defendants' supplemental request for judicial notice.

The Court does not rely on the documents submitted as Exhibit 3 and 4 to Defendants' request for judicial notice, and it denies Defendants' request as to those documents as moot.

C. The Court Dismisses Plaintiff's Claims.

Defendants argue that Plaintiff's ADA claim fails as a matter of law because the reservation system on their website complies with 28 C.F.R. section 36.302(e)(1) ("Reservations Rule"). That section requires a hotel to:

> Identify and describe accessible features in the hotels and guest rooms offered through its reservations service in enough detail to reasonably permit individuals with disabilities to assess independently whether a given hotel or guest room meets his or her accessibility needs.

28 C.F.R. section 36.302(e)(1)(ii).

Further, the Department of Justice ("DOJ") has issued commentary to the Reservations Rule providing that the "reservations system is not intended to be an accessibility survey." *See* 28 C.F.R. Pt. 36, App. A, "Title III Regulations 2010 Guidance and Section-by-Section Analysis" ("Guidance"); *see also* Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, 75 FR 56,236, 56,274 (Sept. 15, 2010) (to be codified at 28 C.F.R. pt. 36). The Guidance further explains

> "[f]or hotels that were built in compliance with the 1991 Standards it may be sufficient to specify that the hotel is accessible and, for each accessible room, to describe the general type of room (e.g., deluxe executive suite), the size and number of beds (e.g., two queen beds), the type of accessible bathing facility (e.g., roll-in shower), and communications features available in the room (e.g., alarms and visual notification devices). Based on that information, many individuals with disabilities will be comfortable making reservations.

Id.

The Guidance also notes that "individuals with disabilities may wish to contact the hotel or reservations service for more detailed information" after making a reservation at which point hotel staff "should be available to provide additional information such as the specific layout of the room and bathroom, shower design, grab-bar locations and other amenities available…" *Id.* Contrary to Plaintiff's characterization of the Guidance as "some musings by the DOJ," the Guidance is entitled to substantial deference. *Kohler v. Presidio Int'l, Inc.*, 782 F.3d 1064, 1069 (9th Cir. 2015).

Numerous courts have found that the Reservations Rule is not intended to be an accessibility survey and that the rule does not require a hotel to include all potentially relevant accessibility information on its website. *See Barnes v. Marriott Hotel Servs., Inc.*, No. 15-cv-01409-HRL, 2017 WL 635474, at *10 (N.D. Cal. Feb. 16, 2017) (finding website with similar descriptions and detail appropriate and acceptable under the DOJ's guidance); *Strojnik v. Orangewood*, No. 8:19-cv-00946-DSF, 2020 U.S. Dist. LEXIS 11743, at *21 (C.D. Cal. January 22, 2020), *aff'd* 829 F. App'x 783 (9th Cir. 2020) ("[W]ebsites need not include all potentially relevant accessibility information; if a website was required to have all relevant information, individuals would not need to call the hotel to get further information."); *Strojnik v. 1315 Orange LLC*, No. 19-cv-1991-LAB-JLB, 2019 WL 5535766, at *2 (S.D. Cal. Oct. 25, 2019) (granting motion to dismiss noting that plaintiff failed to cite any authority "suggesting a hotel has an obligation to describe to the public the physical layout of its rooms in exhaustive detail without being asked); *Rutherford v. Evans Hotels, LLC*, 2020 WL 5257868, at *17 (S.D. Cal. Sept. 3, 2020) ("[J]ust because [plaintiff] would like additional details does not mean that he is entitled to it under Section 36.302(e)(1)(ii).").

Here, the accessibility section of the website lists the accessible common areas and features

of the hotel, including the business center, fitness center, restaurants, elevator, and registration desk. (*See* RJN, Ex.1.) The website also provides information about guest room accessibility. It provides a list of twenty physical features in its accessible rooms, including 32" wide doorways, bathroom and bathtub grab bars, roll-in shower, and bathtub seat. (*Id.*) The website invites individuals to contact the hotel for more information about the "physical features of our accessible rooms, common areas, or special services." (*Id.*) In addition to this general accessibility information, the website describes the accessibility features available in a particular room type. (*See, e.g.*, RJN, Ex. 2 (describing accessibility features in king bed deluxe guest room, including roll-in shower).) The Court concludes that Defendants' website complies with the Reservations Rule. This conclusion is supported by the ample case law discussed above finding similar information on website reservation systems sufficient to meet the requirements of the rule and by the DOJ Guidance, which makes clear that specific details about accessibility features do not need to be provided on a hotel website.

Plaintiff asserts that more is required than Defendants' identification of certain features as accessible, but he offers no case law or DOJ Guidance supporting his argument. Nor does he meaningfully address the myriad cases discussed above finding the opposite, and his superficial attempts to distinguish Defendants' authorities are not persuasive.

Defendant also moves to dismiss Plaintiff's Unruh Act claim, which is predicated on Defendants' alleged violation of the ADA. (*See* Compl. ¶ 26.) Defendant argues that absent a viable ADA claim, Plaintiff's Unruh Act claim must also be dismissed. Plaintiff concedes this argument by failing to address it in his opposition. Moreover, because Plaintiff's ADA claim fails, the dependent Unruh claim fails as well. *See Cullen v. Netflix, Inc.*, 600 F. App'x 508, 509 (9th Cir. 2015).

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CONCLUSION

For the foregoing reasons, the Court GRANTS Defendants' motion to dismiss. Based on the allegations in the complaint and the judicially-noticed information on Defendants' website, the Court finds that granting Plaintiff leave to amend would be futile and DISMISSES the complaint WITH PREJUDICE. A separate judgment will issue, and the Clerk shall close the file.

IT IS SO ORDERED.

Dated: March 16, 2021

JEFFREY S. WHITE
United States District Judge