

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Advocates for Individuals with Disabilities,
LLC, et al.,

Plaintiffs,

v.

Wright-Oracle LLC,

Defendant .

No. CV-16-02455-PHX-DJH
ORDER

This matter is before the Court on Plaintiffs’ Motion to Dismiss Federal Claims with Prejudice and Motion to Remand to State Court (Doc. 7). Defendant has filed a Response (Doc. 9) and Plaintiffs have filed a Reply (Doc. 10). Also in the Reply, Plaintiffs have moved, in the alternative, to amend the complaint. Defendant filed a Response to Plaintiffs’ Motion to Amend Complaint (Doc. 11), after which it filed a Notice of Errata (Doc. 12) and attached a proposed Amended Response to Plaintiffs’ Motion to Amend Complaint. Plaintiffs subsequently filed a Response to Defendant’s Notice of Errata and Motion to Strike Portions of Defendant’s Amended Response (Doc. 13). Lastly, Defendants filed a Response to Plaintiffs’ Motion to Strike (Doc. 14).

I. BACKGROUND

This is one of the many cases in the District of Arizona, including one of several assigned to this Court, in which Plaintiff Advocates for Individuals with Disabilities Foundation (“AID”) alleges that a local business has violated the Americans with Disabilities Act (“ADA”) and the Arizona counterpart (“AZDA”) by failing to provide

1 adequate signage or parking spaces for disabled persons. Since March 2016, more than
2 160 such cases have been filed in or removed to this district court. Approximately one
3 thousand such cases have been filed in the Arizona state court.

4 Here, AID is named in the caption but the body of the Verified Complaint appears
5 to contain the allegations of a singular plaintiff, David Ritzenthaler, who is sometimes
6 named as a co-plaintiff in AID's cases. Moreover, only Mr. Ritzenthaler's signature
7 appears at the end of the Verified Complaint. No signature on behalf of AID is provided
8 and there is no assertion that Mr. Ritzenthaler is a member of AID who is acting on the
9 organization's behalf.

10 Plaintiff Ritzenthaler alleges that "Defendant's Public Accommodation has
11 barriers of access to disabled individuals by virtue of inadequacy of handicapped parking
12 spaces, insufficient designation or signage and or insufficient disbursement of such
13 parking spaces, notwithstanding that such modifications are readily achievable." (Doc. 1-
14 1 at 4). Ritzenthaler alleges that he suffers from a disability and has a state issued license
15 plate or placard authorizing him to park in designated handicapped parking spaces. He
16 alleges that on March 15, 2016, he "became aware" of Defendant's violations and has
17 "actual knowledge of at least one barrier" related to his disability such that he and others
18 similarly situated are deterred from visiting Defendant's business. (*Id.* at 5-6).
19 Ritzenthaler further alleges that "[a]s a result of Defendant's non-compliance with the
20 AZDA and the ADA, Plaintiff will avoid and not visit Defendant's Public
21 Accommodation in the future unless and until all AZDA and ADA violations have been
22 cured." (*Id.* at 6). He seeks declaratory relief, injunctive relief, monetary damages, and
23 attorney's fees and costs.

24 **II. DISCUSSION**

25 Given the large number of similar cases filed by Plaintiffs, several other judges in
26 this district have issued decisions on issues common to many of the cases. In the interest
27 of maintaining consistency among rulings in similar cases within the district, this Court
28 has reviewed several of the other judges' decisions and has considered them here to

1 decide the pending motions. In particular, in a very similar case brought by Plaintiffs
2 AID and Mr. Ritzenthaler, District Judge Campbell wrote a thorough and well-reasoned
3 decision addressing Plaintiffs' Article III standing. (CV-16-02375-PHX-DGC at Doc.
4 27). Similarly, in CV-16-02413-PHX-GMS at Doc. 28, District Judge Snow wrote a
5 comprehensive decision resolving a nearly identical motion to dismiss federal claims and
6 remand to state court as the one before this Court. Relying on the analyses in those cases,
7 this Court recently issued its own Order (Doc. 20 in CV 16-2169-PHX-DJH) in a nearly
8 identical case and in the same procedural posture as this case. Accordingly, as the
9 following discussion reflects, the Court reaches the same result here.

10 **A. Standing**

11 “[T]o invoke the jurisdiction of the federal courts, a disabled individual claiming
12 discrimination must satisfy the case or controversy requirement of Article III by
13 demonstrating his standing to sue at each stage of the litigation.” *Chapman v. Pier 1*
14 *Imports (U.S.) Inc.*, 631 F.3d 939, 946 (9th Cir. 2011) (en banc). “Federal courts are
15 required *sua sponte* to examine jurisdictional issues such as standing.” *Id.* at 954
16 (citation, internal quotation marks and brackets omitted).

17 Although the parties did not address the issue of standing in their filings, the Court
18 must satisfy itself that Plaintiffs have standing to maintain this action before proceeding.
19 Because the Complaint in this action is nearly identical to the Verified Complaint in the
20 case recently decided by this Court, the same analysis applies here. (Compare Doc. 1-1
21 at 3-10 of this case with Doc. 1-1 at 1-8 of case no. CV 16-2169-PHX-DJH).

22 Applying that analysis, this Court concludes that neither Plaintiff AID nor Plaintiff
23 Ritzenthaler has standing under Article III to maintain this action. Regarding AID, an
24 organization can bring an action on its own behalf or on behalf of its members. *See*
25 *Friends of the Earth, Inc. v. Laidlaw Env'tl. Servs. (TOC), Inc.*, 528 U.S. 167, 169 (2000).
26 “An association has standing to bring suit on behalf of its members when its members
27 would have standing to sue in their own right, the interests at stake are germane to the
28 organization's purpose, and neither the claim asserted nor the relief requested requires

1 individual members' participation in the lawsuit." *Id.*

2 As referenced above, AID alleges no independent injury as an organization. Thus,
3 the only possible basis for AID to have standing is to have brought this action on behalf
4 of its members. The Complaint, however, does not allege that the action is brought on
5 behalf of any members of AID. In addition, no members of AID are identified in the
6 Complaint. In the section of the Complaint that identifies the parties, only Mr.
7 Ritzenthaler is identified as a plaintiff and he does not allege that he is a member of
8 AID.¹ (Doc. 1-1 at 3). Nor does he allege membership in AID anywhere else in the body
9 of the Complaint. Absent any allegations of independent harm to the organization, and
10 absent any allegations that this action was brought on behalf of any members of AID, the
11 Court finds that Plaintiff AID has failed to demonstrate organizational standing under
12 Article III.

13 With regard to Plaintiff Ritzenthaler, an individual must satisfy three elements to
14 establish Article III standing: (1) an injury-in-fact, (2) causation between the injury
15 alleged and the allegedly wrongful conduct, and (3) that the injury is likely to be
16 redressed by a favorable decision from the court. *Lujan v. Defenders of Wildlife*, 504
17 U.S. 555, 560 (1992). Plaintiffs have the burden to establish all three elements. *Id.* at
18 561. An injury-in-fact is "(a) concrete and particularized, and (b) actual or imminent, not
19 conjectural or hypothetical." *Id.* at 560 (internal quotations and citations omitted). This
20 includes a "requirement that a party seeking review must allege facts showing that he is
21 himself adversely affected." *Sierra Club v. Morton*, 405 U.S. 727, 740 (1972).

22 Like the Complaint in CV 16-2169-PHX-DJH, and as noted above, Ritzenthaler
23 here alleges that on March 15, 2016,² he "became aware" of Defendant's violations and
24 has "actual knowledge of at least one barrier" related to his disability such that he and
25

26 ¹ Even if the Complaint alleged that Mr. Ritzenthaler was a member of AID, the
27 organization would not have standing. For the reasons discussed below, Ritzenthaler
28 does not have standing to sue in his own right. Consequently, a required element for
organizational standing would still be missing.

² The same date is alleged in both cases.

1 others similarly situated are deterred from visiting Defendant’s business. (Doc. 1-1 at 2-
2 4). But, as Judge Campbell explained in his recent order, “the complaint does not allege
3 how Ritzenthaler learned of the alleged barrier, whether he has ever visited Defendant’s
4 business, whether he lives or travels anywhere near the business, or even whether he
5 patronizes businesses of the same type.” (CV 16-2375-PHX-DGC, doc. 27 at 6). The
6 same is true here. Indeed, Plaintiff fails to even identify the nature of Defendant’s
7 business. Instead, Plaintiff merely alleges that he has the right to visit Defendant’s
8 business “in the future, for business, pleasure, medical treatment or other commercial
9 purposes....” (Doc. 1-1 at 6).

10 Accordingly, in accordance with this Court’s Order in CV 16-2169-PHX-DJH,
11 Plaintiff Ritzenthaler’s allegations fail to establish the required injury-in-fact to confer
12 standing under Article III. The Court finds that Plaintiff’s allegations, which fail to show
13 he ever visited Defendant’s property and state that he learned of a barrier through another
14 source, are insufficient to show Plaintiff suffered an injury-in-fact. Plaintiff therefore
15 lacks standing to pursue his claims in federal court.

16 **B. Remand to State Court**

17 The constraints of Article III “do not apply to state courts, and accordingly the
18 state courts are not bound by the limitations of a case or controversy or other federal rules
19 of justiciability even when they address issues of federal law.” *ASARCO Inc. v. Kadish*,
20 490 U.S. 605, 617 (1989). A plaintiff who fails to establish Article III standing to bring
21 suit in federal court is not necessarily barred from pursuing the same suit in state court.

22 Unlike more rigid Article III requirements, Arizona law affords trial courts
23 discretion when addressing standing:

24 We have previously determined that the question of standing in Arizona is
25 not a constitutional mandate since we have no counterpart to the “case or
26 controversy” requirement of the federal constitution. In addressing the
27 question of standing, therefore, we are confronted only with questions of
28 prudential or judicial restraint. We impose that restraint to insure that our
courts do not issue mere advisory opinions, that the case is not moot and
that the issues will be fully developed by true adversaries. Our court of

1 appeals has explained that these considerations require at a minimum that
2 each party possess an interest in the outcome. Thus, the question of
3 standing in Arizona cases such as this need not be determined by rigid
4 adherence to the three-prong [federal test], although those factors may be
5 considered.

6 *Armory Park Neighborhood Ass'n v. Episcopal Cmty. Servs. in Arizona*, 712 P.2d 914,
7 919 (Ariz. 1985) (internal citations omitted); *see also Bennett v. Brownlow*, 119 P.3d 460,
8 462 (Ariz. 2005) (standing can be waived by Arizona courts in rare circumstances).

9 Given the more flexible standing requirements of Arizona law, the Court here
10 cannot be “absolutely certain” that Plaintiffs lack standing in state court. *Bell*, 922 F.2d
11 at 1425. As a result, the Court will remand rather than dismiss this case for lack of
12 standing. In remanding, the Court will not dismiss the federal ADA claims because state
13 courts have concurrent jurisdiction over those claims and the state courts may decide
14 whether Plaintiffs have sufficient standing to pursue them. *See Yellow Freight Sys., Inc.*
15 *v. Donnelly*, 494 U.S. 820, 821 (1990) (“we conclude that Congress did not divest the
16 state courts of their concurrent authority to adjudicate [civil actions brought under Title
17 VII of the Civil Rights Act of 1964]”); *Hapgood v. City of Warren*, 127 F.3d 490, 494
18 (6th Cir. 1997) (“State courts have concurrent jurisdiction over ADA claims”); *Jones v.*
19 *Illinois Cent. R. Co.*, 859 F. Supp. 1144, 1145 (N.D. Ill. 1994) (interpreting *Yellow*
20 *Freight*, “it necessarily follows that the state courts have concurrent jurisdiction over
21 ADA claims as well”); *Krouse v. Am. Sterilizer Co.*, 872 F. Supp. 203, 205 (W.D. Pa.
22 1994) (“it appears to be solidly established that state courts have concurrent jurisdiction
23 over ADA cases”).

24 **C. Leave to Amend**

25 In the Reply, Plaintiffs request leave to amend “[i]n the event the Court finds
26 cause to deny Plaintiffs’ Motion to Dismiss Federal Claims and Motion to Remand.”
27 (Doc. 10 at 9). By essentially granting Plaintiffs’ request to remand, albeit not for the
28 reasons they presented, Plaintiffs’ request for leave to amend is rendered moot.
Moreover, Plaintiffs failed to comply with the Local Rules of Practice in seeking leave to

1 amend. *See* LRCiv 15.1(a) (requiring a party who moves for leave to amend to attach a
2 copy of the proposed amended pleading as an exhibit to the motion). For these reasons,
3 the Court will not consider Plaintiffs' request for leave to amend.

4 **D. Fees Resulting from Removal**

5 Defendant has requested its reasonable fees and costs incurred in removing this
6 matter to federal court. Defendant argues here that Plaintiffs induced it "to incur the
7 expense of removal (both by representing they intended to pursue their ADA claim and
8 by refusing to dismiss the federal claim when prompted), only to change course
9 immediately after the expenses were incurred, rendering the expenses pure waste." (Doc. 9
10 at 6). Defendant explains that Plaintiffs could have dismissed their federal claim before
11 the removal deadline to avoid any wasted removal fees and costs. According to
12 Defendant, Plaintiffs instead represented that they intended to pursue their federal claims.
13 Relying on that representation, Defendant removed the case to federal court. Soon
14 thereafter, Plaintiffs filed their motion to dismiss the federal claims and remand the
15 matter back to state court.

16 Plaintiffs argue in response that Defendant's counsel engaged in "gamesmanship"
17 by informing Plaintiffs' counsel that any defendant he represented in these parking space
18 cases would remove the case to federal court where a federal claim is alleged. Plaintiffs
19 claim they are force to either stipulate to dismissal of the federal claims in state court or
20 litigate the case in federal court, which they sought to avoid.

21 28 U.S.C. § 1447(c) provides in pertinent part that "[a]n order remanding the case
22 [to the State court] may require payment of just costs and any actual expenses, including
23 attorney fees, incurred as a result of the removal." "[A]bsent unusual circumstances,
24 attorney's fees should not be awarded when the removing party has an objectively
25 reasonable basis for removal." *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 136
26 (2005). A fee award under § 1447(c) "is left to the district court's discretion, with no
27 heavy congressional thumb on either side of the scales..." *Id.* at 139. That discretion,
28 however, is guided by certain legal standards. *Id.* "[T]he standard for awarding fees

1 should turn on the reasonableness of the removal.” *Id.* at 141. The test for “awarding
2 fees under § 1447(c) should recognize the desire to deter removals sought for the purpose
3 of prolonging litigation and imposing costs on the opposing party” while also recognizing
4 that parties make strategic choices in litigation. *Id.* at 140.

5 Here, although Plaintiffs had the initial right to choose the forum in which to file
6 their Complaint, Defendant had the right to remove this action to federal court in light of
7 the federal ADA claim presented. Plaintiffs knew from correspondence with Defendant’s
8 counsel that Defendant would remove any case with a federal claim. If Plaintiffs wanted
9 to stay in state court, they could have stipulated to dismissal of the federal claim and
10 litigated the corresponding state court claim in state court. Instead, Plaintiffs informed
11 Defendant’s counsel that they intended to pursue their federal claim, thus exposing
12 themselves to likely removal. When Defendant in fact removed the case, Plaintiffs
13 promptly moved to dismiss the federal claim, despite their prior representation that they
14 intended to pursue the federal claim, and remand the case to state court. Plaintiffs’
15 actions caused Defendant to unnecessarily incur fees for the removal.

16 Under these circumstances, had the Court considered and granted Plaintiffs’
17 Motion to Dismiss Federal Claims with Prejudice and Motion to Remand to State Court
18 as requested, the Court would have also granted Defendant the fees it incurred for the
19 time between the removal and the remand. Plaintiffs’ actions as outlined above would
20 have warranted an award of fees to Defendant. Here, however, the Court, *sua sponte*,
21 raised the issue of standing and found that Plaintiffs lack standing to present their claims
22 in federal court. Consequently, the Court finds it would be unjust to award fees to
23 Defendant when, despite Plaintiffs’ questionable conduct in filing the motion to dismiss
24 the federal claim, the Court on its own determined that Plaintiffs have no standing. In
25 other words, even if Plaintiffs had not filed their motion to dismiss and remand after
26 representing to Defendant that they intended to pursue their federal claim, the Court
27 would have remanded the matter anyway based on a lack of standing. For these reasons,
28 Defendant is not entitled to its fees associated with the remand.


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Accordingly,

IT IS ORDERED directing the Clerk of Court to remand this action back to Maricopa County Superior Court.

IT IS FURTHER ORDERED that Plaintiffs’ Motion to Dismiss Federal Claims with Prejudice and Motion to Remand to State Court (Doc. 7), Plaintiffs’ Alternative Motion to Amend Complaint (Doc. 10) and Plaintiffs’ Motion to Strike Portions of Defendant’s Amended Response (Doc. 13) are **DENIED** as moot.

Dated this 29th day of November, 2016.



Honorable Diane J. Humetewa
United States District Judge