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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY:  DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GAYNOR CARLOCK,

Plaintiff,

v.

COLLINS MOTORS, INC., ET AL.,

Defendants.

Civil No. 04CV0370-J (RBB)

ORDER:

- (1) DISMISSING PLAINTIFF'S ADA CLAIM FOR LACK OF STANDING AND MOOTNESS; and
- (2) DISMISSING PLAINTIFF'S REMAINING STATE LAW CLAIMS FOR LACK OF SUBJECT MATTER JURISDICTION.

Currently before the Court is the issue of whether Plaintiff Gaynor Carlock ("Plaintiff") has standing to pursue his lawsuit alleging violation of the Americans with Disabilities Act ("ADA"). On March 28, 2005, the Court issued an Order to Show Cause why Plaintiff's ADA claims should not be dismissed as moot. (Doc. No. 44.) Pursuant to that Order, the parties have submitted Supplemental Briefing and Replies. (Doc. Nos. 46, 48, 59, 61.) For the reasons set forth below, the Court DISMISSES Plaintiff's ADA claim as moot because Plaintiff lacks standing and DISMISSES Plaintiff's state law claims for lack of subject matter jurisdiction.

Background Facts

On February 20, 2004, Plaintiff filed suit against Defendants Collins Motors, Inc., et al. ("Defendants"), alleging ADA violations at Defendants' used car dealership premises. (Doc. No.

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ENTERED ON 5-5-05 04CV0370-J (LSP)

1 1.) Plaintiff alleged the following premises deficiencies: lack of signage indicating disability
2 access at the entrance, lack of accessible van parking, lack of handrails in stairways, lack of
3 accessible doorknob, and inaccessible threshold entrance. (See Compl. at 4-5.) Plaintiff alleged
4 six causes of action: (1) violation of the ADA; (2) violation of California Accessibility Laws; (3)
5 violation of the California Unruh Civil Rights Act; (4) negligent infliction of emotional distress;
6 (5) intentional infliction of emotional distress; and (6) declaratory relief. (Id. at 6-15.)

7 On February 23, 2005, Plaintiff filed a motion for summary judgment. (Doc. No. 20.)
8 This Court denied summary judgment on Plaintiff's ADA and related state law claims, but
9 granted summary judgment on the following issues: (1) Defendants' used car dealership is a
10 public accommodation under the ADA, and (2) Defendants' premises contained architectural
11 barriers of inadequate structure of threshold entrance, lack of signage at the entrance indicating
12 disability accessibility, lack of handrails in the stairways, and lack of signage indicating public
13 parking was unavailable. (Order on Mot. for Summary Judgment at 10.) The Court found that
14 genuine issues of fact remained regarding whether Plaintiff had standing to pursue this suit and
15 whether modifications to the premises were readily achievable.

16 In their supporting documents to the motion for summary judgment, Plaintiff indicated
17 that Defendants had removed the architectural barriers at their used car dealership premises.
18 (Pl.'s Mem. of P. and A. to Mot. for Summary Judgment at 5.) This prompted the Court to issue
19 an Order to Show Cause why the case should not be dismissed as moot because Plaintiff lacks
20 standing to pursue the litigation.

21 *Legal Standard*

22 Under Article III of the United States Constitution, federal courts may only adjudicate
23 actual cases or controversies, where true adversarial interests give rise to a clear and concrete
24 conflict. *Flast v. Cohen*, 392 U.S. 83, 96-97 (1968). As part of the actual case or controversy
25 requirement, plaintiffs must have standing throughout the litigation of a lawsuit. 15 Moore's
26 Federal Practice § 101.32 (Matthew Bender 3rd ed.). If a plaintiff loses standing at some point
27 in the litigation, the case becomes moot. See *Lewis v. Continental Bank Corp.*, 494 U.S. 472,
28 477-78 (1990) (holding that parties must maintain a personal stake in the litigation throughout

1 trial and appeal). Courts are required to examine sua sponte jurisdictional issues such as
2 standing. *See BC by & Through Powers v. Plumas Unified Sch. Dist.*, 192 F.3d 1260, 1264 (9th
3 Cir. 1999).

4 In order to establish and maintain standing to bring suit, a plaintiff bears the burden of
5 showing: (1) injury-in-fact, or the invasion of a legally protected interest, that is both (a)
6 concrete and particularized and (b) actual or imminent; (2) causal connection between the injury
7 and the conduct complained of; and (3) likelihood that a favorable decision will redress the
8 wrong. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

9 Under the ADA, a plaintiff must establish standing sufficient to seek injunctive relief. *See*
10 42 U.S.C. § 12188(a) (stating that the available remedies are those set forth in section 2000a-
11 3(a), which only provides for injunctive relief). A plaintiff is only entitled to injunctive relief
12 under the ADA if he is "being subjected to discrimination on the basis of disability...or...has
13 reasonable grounds for believing [he] is about to be subjected to discrimination." *Id.* at (a)(1).
14 When a plaintiff seeks injunctive relief in anticipation of future injury, the Supreme Court has
15 held that exposure to past illegal conduct does not give rise to an actual or imminent injury
16 unless there are "'continuing, present adverse effects'" and a plaintiff shows that "'there is a real
17 and immediate threat of repeated injury." *City of Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983)
18 (quoting *O'Shea v. Littleton*, 414 U.S. 488, 495-6 (1974)).

19 Since standing is an "indispensable part of the plaintiff's case," a plaintiff ultimately must
20 do more than make allegations which, if true, would establish standing. *Lujan*, 504 U.S. at 561.
21 Rather, a plaintiff bears the burden of proof *at each stage of the litigation* to establish those facts
22 supporting standing. *See id.*; 15 Moore's Federal Practice at § 101.31. When the litigation is at
23 the summary judgment stage, the plaintiff cannot rest on mere allegations, but must set forth, by
24 affidavit or other evidence, specific facts necessary to establish standing. *See Lujan*, 504 U.S. at
25 561 (citing Fed. R. Civ. P. 56(c)); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256
26 (1986). Summary judgment is granted if the "pleadings, depositions, ... and admissions on file,
27 together with the affidavits, if any, show that there is no genuine issue as to any material fact and
28 that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). Genuine

1 issues of fact "can be resolved only by a finder of fact because they may reasonably be resolved
2 in favor of either party." *Anderson*, 477 U.S. at 250.

3 **Discussion**

4 **I. Dismissal of Plaintiff's ADA Claim for Lack of Standing and Mootness**

5 The Court has called into question the "injury-in-fact" element of standing under the
6 ADA. In this case, Plaintiff's Complaint alleges injury in the form of deterrence; Plaintiff states
7 that in attempting to enter Defendants' premises he "encountered access barriers" and that he
8 "desires to return to Defendants' place of business." (Compl. ¶¶ 7, 12.) Current deterrence based
9 on knowledge of access barriers is a cognizable injury establishing standing under the ADA.
10 *Pickern v. Holiday Quality Foods, Inc.*, 293 F.3d 1133, 1137-38 (9th Cir. 2002). Additionally,
11 under the ADA, such deterrence must also be based upon "reasonable grounds." See 42 U.S.C. §
12 12188(a)(1). The relevant issues here are (1) whether Plaintiff has reasonable grounds for
13 current deterrence, and (2) whether Plaintiff remains currently deterred, from returning to
14 Defendants' premises.

15 Since the Court was alerted to Plaintiff's potential lack of standing at the summary
16 judgment stage of litigation, the Court examines Plaintiff's standing according to a summary
17 judgement standard; that is, whether Plaintiff has set forth, either through affidavits or other
18 evidence, specific facts necessary to establish standing.¹ See *Lujan*, 504 U.S. at 361; see also
19 *Molski v. Arby's Huntington Beach*, 359 F.Supp. 2d 938, fn. 10 (C.D. Cal. 2005) (stating that
20 although at the pleading stage of litigation plaintiff need only allege facts sufficient to establish
21 standing, "at successive stages in the litigation...[plaintiff] may be required to submit additional
22 evidence to support his standing"). For the reasons set forth below, the Court finds that Plaintiff
23 lacks standing for two reasons: (1) Plaintiff lacks "reasonable grounds" for being deterred from
24 Defendants' used car dealership because Defendants have removed the alleged access barriers
25 and (2) Plaintiff has not shown that he still intends to return to Defendants' premises and is
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27 ¹ Although Defendants have not moved for summary judgment, the Court's Order to Show Cause
28 was issued after Plaintiff's Motion for Summary Judgment. In the Order to Show Cause, the Court
requested that Plaintiff show why his ADA claim should not be dismissed for lack of standing and
mootness. Thus, this litigation is at the stage of summary judgment, and Plaintiff is effectively in the
position of a nonmoving party in a motion for summary judgment.

1 currently deterred from doing so. For these reasons, the Court **DISMISSES** Plaintiff's ADA
2 claim.

3 **A. Removal of Access Barriers and Lack of Reasonable Grounds for Deterrence**

4 In order to establish injury based on deterrence, sufficient for standing under the ADA, a
5 plaintiff must show that access barriers continue to exist at a defendant's premises. *Pickern*, 293
6 F.3d at 1137; *see also Dudley v. Hannaford Bros. Co.*, 146 F.Supp.2d 82, 86 (D. Me. 2001)
7 (holding that a single past act of discrimination provides grounds for standing under the ADA,
8 only if the lack of accommodation continues to exist). The ADA further requires that Plaintiff's
9 fear of future discrimination must be based upon "reasonable grounds." 42 U.S.C. § 12188(a)(1).
10 The Court finds that Defendants' have effectively removed the access barriers, stripping Plaintiff
11 of reasonable grounds to believe he will be discriminated against in the future.

12 Defendants have made both structural alterations to their premises to allow wheelchair
13 access, and installed numerous signs to inform disabled individuals that access is available.
14 Specifically, Defendants have removed all architectural barriers on their premises by: (1)
15 changing the handle on the front door; (2) placing handrails on the steps; (3) installing an
16 aluminum plate at the threshold entrance to the office for access; (4) installing a sign stating
17 "please ring for assistance" outside the entrance to the office and a sign indicating accessibility;
18 (5) obtaining a ramp for wheelchair access; and (6) installing a sign indicating no public parking
19 is available. (Def.'s Supp. Briefing at 4; Decl. of Collins ¶ 1.) Plaintiff does not dispute that
20 these changes have been made; in fact, Plaintiff initially introduced these alterations to the Court
21 as subsequent remedial measures taken by Defendants. (See Pl.'s Mem. of P. and A. in support
22 of Mot. for Summary Judgment at 5.)

23 The Court finds that Defendants' alterations have effectively removed the access barriers
24 forming the grounds for Plaintiff's deterrence. The photographs submitted by both parties attest
25 to these alterations. (See Decl. of Collins, Ex. A; *see also* Decl. of Carter, ADA Report.)
26 Moreover, Defendant's expert, Robert Novick, states that "[a]fter a thorough investigation, I
27 found the premises to be wholly compliant with the ADA...a disabled person would encounter
28 no architectural barriers precluding...his accessibility...on these premises[.]" (Decl. of Novick ¶

1 3.) Thus, the Court finds that the evidence conclusively shows that Plaintiff currently does not
2 have any "reasonable grounds" for believing that he will be discriminated against at Defendants'
3 used car dealership premises in the future. See 42 U.S.C. § 12188(a)(1).

4 The Court finds that Plaintiff's arguments to contrary are contrived and unavailing.
5 Plaintiff argues, based on an inspection by his expert, William Carter, that Defendants' premises
6 still contain architectural barriers in (1) the lack of a level area on both sides of the office door,
7 caused by an aluminum plate and (2) a portable ramp that lacks handrails and is too short. (Decl.
8 Of Carter §§ 4, 5.)

9 Plaintiff's first argument fails because the alleged barrier is actually a means of access for
10 wheelchair patrons. The photographs submitted by both parties clearly show that Defendants
11 have installed a small aluminum plate specifically *in order to facilitate wheelchair entry* into the
12 office, remedying the lack of level area on both sides of the door. (See Decl. of Collins, Ex. A;
13 see also Decl. of Carter, ADA Report.) Without this aluminum plate, the lack of level surfaces
14 on either side of the office door would prevent wheelchair access. Plaintiff's objection to
15 Defendants' remedy is clearly contrived; without the aluminum plate, Plaintiff is likely to argue
16 that the office is inaccessible to wheelchair patrons. The Court finds that the aluminum plate is
17 more than sufficient to allow access to disabled individuals, and that no reasonable finder of fact
18 would find the alleged lack of level surfaces to constitute "reasonable grounds" for deterrence
19 from the premises. Thus, Plaintiff has failed to set forth a specific issue of fact as to the
20 accessibility of the entrance.

21 Plaintiff has misrepresented the facts to the Court with respect to their second argument.²
22 Contrary to Plaintiff's assertions, the photographs submitted by Defendants clearly reveal that
23 the portable ramp is equipped with handrails. (See Decl. of Collins, Ex. A; see also Supp. Decl.
24 of Collins ¶ 2.) As to the length of the ramp, Plaintiff's expert, Mr. Carter, opines that he saw "a
25 portable ramp to the side of the building approximately six feet to seven long." (Decl. of Carter ¶
26 5.) However, the Court finds that Mr. Carter's opinion as to the length of the ramp is
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28 ² The Court admonishes Plaintiff that any future misrepresentations to the Court will result in the
imposition of sanctions.

1 inadmissible because it lacks proper foundation. Mr. Carter does not claim to have measured the
2 ramp, nor does he have any other concrete knowledge of its length; thus, Mr. Carter lacks
3 "sufficient facts or data" upon which to base his opinion. See Fed. R. Evid. 702. Furthermore,
4 both Defendant Collins, who installed the ramp, and Defendant's expert, Mr. Novick, who
5 conducted a "thorough investigation," assert that the ramp is actually twelve (12) feet in length,
6 twice as long as Mr. Carter's estimate. (Supp. Decl. of Collins ¶ 1; Supp. Decl. of Novick ¶¶ 2,
7 4.) Based on the admissible evidence, the Court concludes that the ramp is twelve feet in length,
8 rather than the unfounded six or seven feet estimate by Mr. Carter. Thus, Plaintiff has failed to
9 set forth a specific issue of fact as to the length of the ramp.

10 Plaintiff has failed to meet his burden of setting forth specific facts to show "continuing,
11 present adverse effects" that give rise to "a real and immediate threat of repeated injury." See
12 *City of Los Angeles*, 461 U.S. at 102 (quoting *O'Shea*, 414 U.S. at 495-6). Based on the
13 admissible evidence submitted, the Court finds as a matter of law that Defendants have
14 effectively removed any access barriers which would constitute reasonable grounds for being
15 deterred from entering Defendants' premises. Accordingly, Plaintiff has failed to set forth
16 specific facts showing that there is a genuine issue whether he currently has standing to pursue
17 his ADA claim, see *Lujan*, 504 U.S. at 561 (stating a plaintiff bears the burden of proving
18 standing at each stage of the litigation), and the Court **DISMISSES** Plaintiff's ADA claim for
19 lack of standing and mootness.

20 **B. Lack of Showing That Plaintiff Is Currently Deterred**

21 Standing based on deterrence requires not only a showing of "discriminatory conditions,"
22 but also that a "plaintiff is aware of [the conditions] and remains deterred." *Pickern*, 293 F.3d at
23 1137; see also *Moreno v. G&M Oil Co.*, 88 F.Supp.2d 1116, 1116 (C.D. Cal. 2000) (holding that
24 plaintiff could not show actual injury against defendant's other gas stations because he did not
25 claim he wanted to visit them); see also *Delil v. El Torito Rest.*, 1997 U.S. Dist. LEXIS 22788
26 (N.D. Cal. 1997) (holding that plaintiff could not show actual or imminent injury where she
27 failed to allege she intended to return to defendant's restaurant).

28

1 Plaintiff has submitted no evidence that he is aware of current access barriers, or that he
 2 currently intends to return to Defendants' premises. (*See generally*, Pl.'s Supp. Briefing.) That
 3 is, the Court has *no evidence* to support the allegation that Plaintiff is currently deterred from
 4 entering Defendants' premises. As an alternate ground for dismissing Plaintiff's ADA claim for
 5 lack of standing, the Court finds that Plaintiff has failed to meet his burden of setting forth
 6 specific facts showing that there is a genuine issue whether he is actually currently deterred from
 7 returning to Defendants' premises. *See Lujan*, 504 U.S. at 561; *see* Fed. R. Civ. P. 56(c).

8 II. Dismissal of Plaintiff's Related State Law Claims

9 As explained below, the Court finds that once Plaintiff's ADA claim is dismissed, the
 10 Court lacks subject matter jurisdiction over Plaintiff's related state law claims. Thus, the Court
 11 **DISMISSES** Plaintiff's related state law claims.

12 Subject matter jurisdiction over Plaintiff's state law claims presently rests upon
 13 supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a).³ (Compl. at 2.) However, once a
 14 federal court has dismissed all of a plaintiff's federal law claims, it has discretion to dismiss a
 15 plaintiff's state law claims as well. 28 U.S.C. § 1367(c)(3); *see also Pickern v. Best W. Timber*
 16 *Cove Lodge Marina Resort*, 194 F. Supp. 2d 1128, 1133 (E.D. Cal. 2002) ("*Pickern II*")
 17 (dismissing plaintiff's ADA-based state law claims for damages after dismissing plaintiff's ADA
 18 claim). In determining whether to dismiss a plaintiff's supplemental state law claims, the court
 19 considers factors of economy, convenience, fairness, and comity. *Imagineering, Inc. v. Kiewit*
 20 *Pacific Co.*, 976 F.2d 1303, 1309 (9th Cir. 1992). Barring unusual or extraordinary
 21 circumstances, the consideration of these factors usually results in the court declining to exercise
 22 jurisdiction over the supplemental state law claims. *See Pickern II*, 976 F.2d at 1309 (citing
 23 *Reynolds v. County of San Diego*, 84 F.3d 1162, 1171 (9th Cir. 1996), overruled on other
 24 grounds in *Acri v. Varian Assoc.'s Inc.*, 114 F.3d 999, 1000 (9th Cir. 1997), and *Wentzka v.*
 25 *Gellman*, 991 F.2d 423, 425 (7th Cir. 1993)).

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 27 ³ Plaintiff's state law claims do not present a federal question. *See Wander v. Kaus*, 304 F.3d 856,
 28 859-60 (9th Cir. 2002) (holding that ADA-based state law claims seeking damages do not give rise to
 federal question jurisdiction). Nor has Plaintiff alleged facts sufficient for diversity jurisdiction. *See* 28
 U.S.C. § 1332; (*see generally*, Compl.) (failing to allege diversity in citizenship or amount in
 controversy).

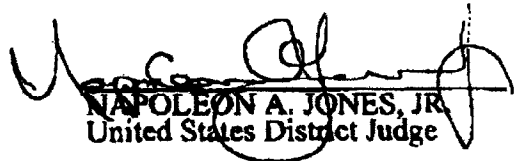
1 Pursuant to this Order, the Court dismisses Plaintiff's only federal law claim, that
 2 premised upon the ADA. Although less convenient to Plaintiff, comity and fairness strongly
 3 favor dismissal of Plaintiff's state law claims. See *United Mine Workers v. Gibbs*, 383 U.S. 715,
 4 727 (1966) ("[n]eedless decisions of state law should be avoided both as a matter of comity and
 5 to promote justice between the parties, by procuring for them a surer-footed reading of the law.
 6 Certainly, if the federal claims are dismissed before trial,...the state law claims should be
 7 dismissed as well"). Moreover, Plaintiff has made no showing of unusual or extraordinary
 8 circumstances to justify retaining jurisdiction over his state law claims. Accordingly, the Court
 9 declines to exercise supplemental jurisdiction under 28 U.S.C. § 1367, and **DISMISSES**
 10 Plaintiff's remaining state law claims.

Conclusion and Order

11
 12 Based on the foregoing analysis, the Court **DISMISSES** Plaintiff Gaynor Carlock's ADA
 13 claim for lack of standing and mootness and **DISMISSES** Plaintiff Gaynor Carlock's remaining
 14 state law claims for lack of subject matter jurisdiction under 28 U.S.C. § 1367.

IT IS SO ORDERED.

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 17 Dated: May 3, 2005

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 NAPOLEON A. JONES, JR.
 United States District Judge

20 cc: Magistrate Judge Brooks
 All Counsel of Record
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Don Detisch

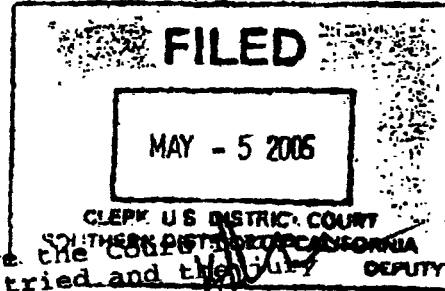
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Case Number: 3:04-cv-00370

JUDGMENT IN A CIVIL CASE

Carlock - PLAINTIFF

Collins Motor Co - DEFENDANT



- JURY VERDICT. This action came before the court for trial by jury. The issues have been tried and the court has rendered its verdict.
- X DECISION BY COURT. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED THAT plaintiff Gaynor Carlock's ADA claim is dismissed for lack of standing and mootness and plaintiff Gaynore Carlock's remaining state law claims are dismissed for lack of subject matter jurisdiction under 28 U.S.C. 1367.....

5/5/05
Date

W. Samuel Hamrick, Jr.
Clerk
[Signature]
K. Johnson

Entered on 5/5/05

pre - Jones
ref - Brooks

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