UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BRIAN WHITAKER,

Plaintiff,

v.

OCI SAN FRAN LLC, et al.,

Defendants.

Case No. 20-cv-06624-JST

ORDER GRANTING MOTION FOR JUDGMENT ON THE PLEADINGS

Re: ECF No. 29

Now before the Court is Defendant OCI San Fran LLC's motion for judgment on the pleadings. ECF No. 29. Plaintiff Brian Whitaker complains that OCI's hotel website does not identify and describe the hotel's accessible features in enough detail to reasonably permit individuals with disabilities to determine whether the hotel meets their accessibility needs, as required by the Americans with Disabilities Act. OCI responds that its website provides all the information required by federal law. The Court agrees with OCI and will grant the motion.

I. BACKGROUND

The purpose of the Americans with Disabilities Act ("ADA"), is, in part "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1). Title III of the ADA requires equal access to public accommodations. *Bass v. Cty. of Butte*, 458 F.3d 978, 980 (9th Cir. 2006). One of the regulations implementing the ADA, which has come to be known as the "Reservations Rule," requires hotel reservation websites to share enough information online about their ADA accommodations so that people with disabilities can determine whether the hotel and its guest rooms meet their accessibility needs. *See* 28 CFR § 36.302(e)(1)(ii).

Whitaker has physical disabilities; he is "substantially limited in his ability to walk" due to a spinal cord injury." ECF No. 1 at 1. "He is a quadriplegic [and] uses a wheelchair for mobility." *Id.* Whitaker "planned on making a trip in September of 2020 to the San Francisco, California, area." ECF No. 1 at 4. "He chose the Comfort Inn & Suites, located at 121 E. Grand Ave, South San Francisco, California, because this hotel was at a desirable price and location." *Id.* The hotel in question is owned and operated by Defendant OCI. *Id.* at 1-2. When he visited the Comfort Inn's website, he "found that there was little information about the accessibility of the rooms." *Id.* at 4. Although several features of the room he wanted were described as "accessible," the information provided "[did] not allow Plaintiff to independently verify if the room is in fact, accessible." *Id.* Whitaker would like to patronize the Comfort Inn & Suites, "but is deterred from doing so because of the lack of detailed information through the hotel's reservation system." *Id.* at 5. He argues that the failure to provide this missing information violates the Reservations Rule. *Id.* at 6.

II. JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1331.

III. JUDICIAL NOTICE

A. Legal Standard

Generally, courts deciding a motion for judgment on the pleadings consider only the pleadings. *Threshold Enters. Ltd. v. Pressed Juicery, Inc.*, 445 F. Supp. 3d 139, 145 (N.D. Cal. 2020). But courts may also consider facts in materials that have been judicially noticed. *Id.* Under the Federal Rules of Evidence, a court must take judicial notice of facts "if a party requests it and the court is supplied with the necessary information" that shows the facts are "not subject to reasonable dispute" – either because they are "generally known within the trial court's territorial jurisdiction," or "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b), (c)(2).

B. Discussion

OCI asks the Court to judicially notice screenshots of the hotel reservations website OCI operates. *See* ECF No. 29-5, Exhibits A, B. Whitaker does not oppose this request.

This Court has previously "reject[ed] the notion that a document is judicially noticeable simply because it appears on a publicly available website." *Rollins v. Dignity Health*, 338 F. Supp. 3d 1025, 1032 (N.D. Cal. 2018). But under the "incorporation by reference" doctrine, a court can consider "documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the [plaintiff's] pleading." *Knievel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005) (citation and quotation marks omitted). Applying that standard here, the Court takes judicial notice of the hotel reservations website screenshots OCI has submitted as Exhibits A and B in their motion for judgment on the pleadings.

OCI also asks that this Court judicially notice several opinions – including from this Court – that bear on the ADA's Reservations Rule. *See* ECF No. 33. There is no need to take judicial notice of these authorities, which the Court will consider as it would any judicial opinion cited by a party. *McVey v. McVey*, 26 F. Supp. 3d 980, 984 (C.D. Cal. 2014) ("It is unnecessary to take judicial notice of the opinion, which plaintiff cites as precedent and which the court can consider as such.") (collecting cases). The request for judicial notice is denied, but the Court will consider OCI's authorities for their persuasive value.

IV. MOTION FOR JUDGMENT ON THE PLEADINGS

A. Legal Standard

The analysis for Rule 12(c) motions for judgment on the pleadings is "substantially identical to [the] analysis under Rule 12(b)(6)." *Chavez v. United States*, 683 F.3d 1102, 1108 (9th Cir. 2012) (citation and quotation marks omitted). Under both rules, "a court must determine whether the facts alleged in the complaint, taken as true, entitle the plaintiff to a legal remedy." *Brooks v. Dunlop Mfg. Inc.*, No. C 10–04341 CRB, 2011 WL 6140912, at *3 (N.D. Cal. Dec. 9, 2011); *Fajardo v. Cty. of Los Angeles*, 179 F.3d 698, 699 (9th Cir. 1999). A plaintiff must allege facts enough to raise his right to relief "above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 55 (2007) (citation omitted). "Finally, although Rule 12(c) does not mention leave to amend, courts have discretion both to grant a Rule 12(c) motion with leave to amend, and to simply grant dismissal of the action instead of entry of judgment." *Lonberg v. City of Riverside*, 300 F. Supp. 2d 942, 945 (C.D. Cal. 2004) (citations omitted).

B. Discussion

1. Hotel Reservations Rule

Under Title III of the ADA, "[n]o individual shall be discriminated on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases[], or operates a place of public accommodation." 42 U.S.C. § 12182(a).

To succeed on a discrimination claim under Title III, 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. 2010). The third element is satisfied when the plaintiff can show a violation of applicable accessibility standards. *Rodriguez v. Barrita, Inc.*, 10 F. Supp. 3d 1062, 1073 (N.D. Cal. 2014).

"To flesh out the details of [Title III's] general rule, Congress charged the Attorney General with the task of promulgating regulations clarifying how public accommodations must meet these statutory obligations." *United States v. AMC Ent., Inc.*, 549 F.3d 760, 763 (9th Cir. 2008). Department of Justice ("DOJ") regulations apply Title III to hotel reservation systems, including websites. *See* 28 C.F.R. § 36.302(e)(1) (the "Reservations Rule"). Pursuant to the Reservations Rule, hotel reservation websites must "[i]dentify 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." *Id.*

After the Reservations Rule was promulgated, the DOJ issued Title III Regulations 2010 Guidance and Section-by-Section Analysis, 28 C.F.R. Pt. 36, App. A, ("2010 Guidance")

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explaining the requirements in more detail.[1] Although it declined to "specify what information must be included in every instance," the 2010 Guidance suggested that a hotel may satisfy the Reservations Rule by indicating the hotel's compliance with the ADA Standards for Accessible Design, originally published in 1991 (the "1991 Standards") or the 2010 ADA Standards for Accessible Design (the "2010 Standards"). 28 C.F.R. Pt. 36, App. A. As the DOJ explained:

> 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) . . . . 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. In addition to the room information described above, these hotels should provide information about important features that do not comply with the 1991 Standards.

Id. The DOJ also noted that, once reservations are made, some hotels may wish to contact the guest to provide, or individuals may wish to contact the hotel or reservations services to obtain, more detailed information. *Id.*

The guidance also explained, however, that hotels may need to provide additional information about some features in specific rooms. The DOJ used showers as an example: "under certain circumstances," the guidance explained, "an accessible hotel bathroom may meet accessibility requirements with either a bathtub or a roll-in shower." *Id.* In those cases, hotels must specify *which* of the two options a room offers. *Id.* The reason for this requirement is straightforward: although a bathtub satisfies the ADA's accessibility requirements, a bathtub will not meet the needs of every person with disabilities. Details about *which* ADA-accessible option a guestroom offers (a bathtub or roll-in shower, to take the DOJ's examples) are therefore necessary for a person with disabilities to – in the words of the Reservations Rule – "assess independently

[1] "The DOJ's administrative guidance regarding the 'public accommodations' provision is 'entitled to deference.'" *C. L. v. Del Amo Hosp., Inc.*, 992 F.3d 901, 911 (9th Cir. 2021) (citing *Bragdon v. Abbott*, 524 U.S. 624, 646 (1998)); *see also Love v. Wildcats Owner LLC*, No. 20-cv-08913-DMR, 532 F. Supp. 3d 872, 878 n.1 (N.D. Cal. Apr. 5, 2021) ("[T]he Reservations Rule on its own is ambiguous and the DOJ's interpretation of the regulation is entitled to deference.").

whether a given hotel or guest room meets his or her accessibility needs." 28 C.F.R. § 36.302(e)(1)(ii).

The DOJ's guidance also makes clear that providing the details just described will not *always* be enough to comply with the reservations-rule. The guidance says those details "may be sufficient," thus leaving room for the possibility that, in some cases, it will not be. 28 C.F.R. § Pt. 36, App. A. As another court in this district recently explained, that is because an accessible room may nonetheless have "something quirky about [it] that many disabled people would need to know" to assess whether it is accessible to them. *See Love v. Concord Hotel LLC, No.* 21-CV-00933-VC, 2021 WL 2966164, at *1 (N.D. Cal. July 15, 2021). For hotel rooms with such quirks, hotels may thus need to disclose more details than the DOJ's guidance contemplates. But for all other hotel rooms built according to current ADA standards, a hotel reservations website satisfies the Reservations Rule if it identifies which rooms are ADA-accessible and specifies which ADA-accessible options those guestrooms offer.

2. Defendant's Website

OCI argues that it complies with the DOJ's 2010 guidance because the Comfort Inn & Suites hotel is built according to the current ADA standards; its website states which rooms are ADA accessible; and the website identifies which ADA-accessible features (of those that can be offered in multiple ways) those rooms offer.

The Court finds that OCI's actions are sufficient to discharge its responsibilities under the Reservations Rule. Whitaker does not challenge that the hotel is ADA accessible. ECF No. 1 at 2 ("Plaintiff . . . is not claiming that that the hotel has violated any construction-related accessibility standard."). As other courts in this district have held, "[a] hotel that is fully compliant with the current Standards need only identify which of several acceptable alternative features the room provides, such as whether it has a shower or a bathtub (both of which are permitted under the Standards)." *See Love v. Wildcats Owner LLC*, No. 20-CV-08913-DMR, 2021 WL 1253739, at *7 (N.D. Cal. Apr. 5, 2021); *see also Love v. Hoyas Owner LLC*, 20-cv-08445-JST (N.D. Cal. Sep. 30, 2021) (surveying cases). Whitaker does not argue that OCI has failed to meet this requirement. Instead, he says that OCI's website violates the ADA because it lacks certain details:

whether "the sink is accessible," whether "the toilets have . . . proper clearance around them," and whether "the desks in the rooms or the maneuvering clearances in the rooms are accessible." ECF No. 1 ¶¶ 14, 16. But the features about which Whitaker says he needs more detail are those the current ADA standards already require, making further information about those features unnecessary. *See Wildcats Owner LLC*, 2021 WL 1253739, at 7-8 (surveying current ADA standards for proper clearance in guest rooms and bathrooms).

In short, because OCI's website offers Whitaker the details he needs to "assess independently whether [OCI's] hotel or guest room meets his . . . accessibility needs," 28 C.F.R. § 36.302(e)(1)(ii), Whitaker cannot state a valid claim under the Reservations Rule. And because the Unruh Act is "coextensive with the ADA," *Whitaker v. Tesla Motors, Inc.*, 985 F.3d 1173, 1175 n.2 (9th Cir. 2021) (quotation marks and citations omitted), Whitaker cannot state a claim under that statute either. Accordingly, Whitaker's Unruh Act claim fails alongside his ADA claim.

CONCLUSION

For the reasons stated above, Defendant OCI's motion for judgment on the pleadings is granted. Because no additional facts could cure the deficiencies in the complaint, amendment would be futile. The Court therefore grants OCI's motion to dismiss with prejudice.

IT IS SO ORDERED.

Dated: January 6, 2022

JON S. TIGAR
United States District Judge