

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 14 2022

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

THERESA BROOKE, a married woman
dealing with her sole and separate claim,

Plaintiff-Appellant,

v.

HARBOR SUITES LLC, DBA Hampton Inn
& Suites Anaheim Garden Grove, a Colorado
limited liability company,

Defendant-Appellee.

No. 21-56232

D.C. No.

8:21-cv-00537-CJC-ADS

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Cormac J. Carney, District Judge, Presiding

Submitted August 31, 2022**
Pasadena, California

Before: M. SMITH and R. NELSON, Circuit Judges, and DRAIN,*** District
Judge.

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision
without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Gershwin A. Drain, United States District Judge for
the Eastern District of Michigan, sitting by designation.

Theresa Brooke appeals the district court's decision to decline to exercise supplemental jurisdiction over her state law Unruh Act claim and its dismissal of her Americans with Disabilities Act (ADA) claim as moot. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm. Because the parties are familiar with the facts, we do not recount them here.

1. We review the district court's decision to decline to exercise supplemental jurisdiction for abuse of discretion. *Arroyo v. Rosas*, 19 F.4th 1202, 1210 (9th Cir. 2021). In *Arroyo*, we held that the district court abused its discretion by declining to exercise supplemental jurisdiction over an Unruh Act claim after granting the plaintiff summary judgment on his ADA claim. *Id.* at 1214–16. The district court here did not run afoul of *Arroyo* here because it declined to exercise supplemental jurisdiction over Brooke's Unruh Act claim seven months before it ruled on her ADA claim.

Brooke's argument that the district court abused its discretion because Harbor Suites admitted the alleged ADA violation is also unpersuasive. Even if the statement Brooke identifies were an admission of an ADA violation (an issue we do not address), the statement was made over six months after the district court declined to exercise supplemental jurisdiction. Therefore, the district court did not abuse its discretion by not factoring this alleged admission into its analysis.

2. We review the district court’s dismissal of Brooke’s ADA claim as moot de novo. *Smith v. T-Mobile USA Inc.*, 570 F.3d 1119, 1122 (9th Cir. 2009). Brooke is correct that Harbor Suites bore the burden of proving the case *was* moot rather than Brooke bearing the burden of proving that the case was *not* moot. *See West Virginia v. EPA*, 142 S. Ct. 2587, 2607 (2022); *see also Adarand Constructors, Inc. v. Slater*, 528 U.S. 216, 221–22 (2000) (per curiam). Even so, we affirm the district court on other grounds. *See Miranda v. City of Casa Grande*, 15 F.4th 1219, 1224 (9th Cir. 2021).

The only remedy available to a private ADA plaintiff is “injunctive relief (i.e., for removal of the barrier).” *Oliver v. Ralphs Grocery Co.*, 654 F.3d 903, 905 (9th Cir. 2011). Therefore, “a defendant’s voluntary removal of alleged barriers prior to trial can have the effect of moot[ing] a plaintiff’s ADA claim.” *Id.* Brooke’s ADA claim is based on a single barrier: the absence of an access aisle. Harbor Suites has now added an access aisle, thus removing the only barrier Brooke complained about. Therefore, the case is moot.

Brooke argues that the case is not moot because Harbor Suites has not established that the access aisle complies in every respect with the ADA. Specifically, she argues, Harbor Suites was obligated to prove that the access aisle is 60 inches wide, 20 feet long, adjoins an accessible route, and does not overlap vehicular ways. We disagree. To state a claim under Title III of the ADA, the

plaintiff must “identify the specific barriers for which the plaintiff seeks injunctive relief” in the complaint. *Id.* at 908; *see also Whitaker v. Tesla Motors, Inc.*, 985 F.3d 1173, 1177 (9th Cir. 2021). Brooke (understandably) did not complain about the dimensions of the access aisle or its location because the access aisle did not exist when she visited the hotel. Although Brooke “might have proceeded by filing a timely motion to amend the complaint” to add these new alleged barriers to her complaint, she did not do so. *Pickern v. Pier 1 Imports (U.S.), Inc.*, 457 F.3d 963, 969 (9th Cir. 2006). Because Brooke did not identify these new barriers in her complaint and did not seek leave to amend to add them to the complaint, the only claim she brought—a claim based on the absence of an access aisle—is moot.

AFFIRMED.