

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOE ACOSTA, Case No. 1:17-cv-00262-LJO-SKO

Plaintiff

**ORDER GRANTING LEAVE TO AMEND
COMPLAINT**

(Doc. 22)

NIRMAL SINGH GILL, et al..

Defendants.

1. INTRODUCTION

Before the Court is an unopposed motion for leave to file an amended complaint, filed on November 17, 2017, by Plaintiff Joe Acosta (“Plaintiff”). (Doc. 22.) The Court has reviewed Plaintiff’s submissions and determined, pursuant to Local Rule 230(g), that the matter is suitable for decision without oral argument. The Court accordingly vacated the motion hearing. (Doc. 23.)

For the reasons set forth below, Plaintiff's unopposed motion to amend the complaint is hereby GRANTED.

II. BACKGROUND

On February 23, 2017, Plaintiff filed a complaint against Defendants Nirmal Singh Gill dba Arco Gas & Food Mart, Navdeep Singh dba Arco Gas & Food Mart, Melvin C. Armey, and Carol L. Gano (collectively “Defendants”) for violations of the Americans with Disabilities Act

1 (“ADA”), 42 U.S.C. § 12101, *et seq.*; California’s parallel Unruh Act, California Civil Code § 51
2 *et seq.*; and the California Health and Safety Code. (Doc. 1.)

3 On November 17, 2017, Plaintiff timely filed the “Motion for Leave to File First Amended
4 Complaint” (the “Motion”). (Doc. 22; *see also* Doc. 21 at 2 (setting November 17, 2017, as the
5 deadline for filing amendments in this case).) Defendants’ opposition to the Motion was due by
6 December 6, 2017. (*See* Doc. 22); *see also* L.R. 230(c). To date, Defendants have not filed any
7 opposition to the Motion, and the date for doing so has passed.

8 III. DISCUSSION

9 Rule 15 of the Federal Rules of Civil Procedure provides that if an amendment is requested
10 more than 21 days after service of a responsive pleading, “a party may amend its pleading only
11 with the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2). The rule
12 further provides that “[t]he court should freely give leave” to amend a pleading “when justice so
13 requires.” *Id.* The Ninth Circuit has instructed that the policy favoring amendments “is to be
14 applied with extreme liberality.” *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079
15 (9th Cir. 1990). “In the absence of any apparent or declared reason—such as undue delay, bad
16 faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by
17 amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of
18 the amendment, futility of amendment, etc.—the leave sought should, as the rules require, be
19 ‘freely given.’” *Foman v. Davis*, 371 U.S. 178, 182 (1962). “Leave to amend is entrusted to the
20 sound discretion of the trial court.” *Pisciotta v. Teledyne Indus., Inc.*, 91 F.3d 1326, 1331 (9th Cir.
21 1996) (citation omitted). “The district court’s discretion to deny leave to amend is particularly
22 broad where plaintiff has previously amended the complaint.” *Ascon Props., Inc.*, 866 F.2d at
23 1160 (citations omitted).

24 In this case, Plaintiff seeks to amend his complaint to “substantively add[] additional
25 barriers to [Plaintiff’s] access, identified during the site inspection which took place on October
26 18, 2017, which related to Plaintiff’s disabilities.” (Doc. 22-1 at 2.) The Court finds that justice
27 would be served by permitting Plaintiff to amend the complaint as specified above. Accordingly,
28 in the absence of any undue prejudice to Defendants, as evidenced by their lack of opposition to

1 the motion, Plaintiff's Motion shall be granted.

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3 **IV. ORDER**

4 Based on the foregoing, it is HEREBY ORDERED that:

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6 1. Plaintiff's unopposed "Motion for Leave to File First Amended Complaint" (Doc.

7 22) is GRANTED;

8 2. Plaintiff shall file his First Amended Complaint as proposed and attached to his

9 Motion (Doc. 22, Ex. A) within two (2) days from the date of this order; and

10 3. Defendants shall file their responses to the First Amended Complaint within the

11 time permitted by the Federal Rules of Civil Procedure.

12 IT IS SO ORDERED.

13 Dated: December 8, 2017

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15 /s/ *Sheila K. Oberto*

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20 UNITED STATES MAGISTRATE JUDGE