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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LARY FEEZOR,

Plaintiff,

No. CIV S-10-0908 KJM CMK

vs.

SEARS, ROEBUCK AND CO., et al.,

Defendants.

ORDER

_____/

This matter comes before the court upon plaintiff’s motion to amend the complaint, filed on May 4, 2010. (ECF 72.) For the following reasons, plaintiff’s motion to amend is hereby GRANTED.

I. PROCEDURAL HISTORY

Plaintiff filed his complaint in this court on April 14, 2010. (ECF 1.) Sears, Roebuck and Co. and Barnes & Noble Booksellers, Inc. (together, “defendants”) filed an answer on May 20, 2010. (ECF 20.) Plaintiff filed the present motion to amend the complaint on May 4, 2011 (ECF 72), in light of a recent Ninth Circuit decision, *Chapman v. Pier 1 Imports (U.S.) Inc.*, 631 F.3d 939 (9th Cir. 2011). On June 3, 2011, defendants filed a statement of non-opposition. (ECF 73.)

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1 II. ANALYSIS

2 Federal Rule of Civil Procedure 15(a)(2) states “[t]he court should freely give
3 leave [to amend its pleading] when justice so requires,” and the Ninth Circuit has “stressed Rule
4 15’s policy of favoring amendments.” *Ascon Properties, Inc. v. Mobil Oil Co.*, 866 F.2d 1149,
5 1160 (9th Cir. 1989). “In exercising its discretion [regarding granting or denying leave to
6 amend] ‘a court must be guided by the underlying purpose of Rule 15 -- to facilitate decision on
7 the merits rather than on the pleadings or technicalities.’” *DCD Programs, Ltd. v. Leighton*, 833
8 F.2d 183, 186 (9th Cir. 1987) (quoting *United States v. Webb*, 655 F.2d 977, 979 (9th Cir.
9 1981)). However, “the liberality in granting leave to amend is subject to several limitations.
10 Leave need not be granted where the amendment of the complaint would cause the opposing
11 party undue prejudice, is sought in bad faith, constitutes an exercise in futility, or creates undue
12 delay.” *Ascon Properties*, 866 F.2d at 1160 (internal citations omitted). In addition, a court
13 should look to whether the plaintiff has previously amended the complaint, as “the district
14 court’s discretion is especially broad ‘where the court has already given a plaintiff one or more
15 opportunities to amend [its] complaint.’” *Id.* at 1161 (quoting *Leighton*, 833 F.2d at 186 n.3).

16 Thus, leave to amend is rightly granted here, where the amendment will not cause
17 defendant undue prejudice, is not sought in bad faith, is not futile, and does not create undue
18 delay. Moreover, this amendment to the complaint is plaintiff’s first.

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1 II. CONCLUSION

2 For the foregoing reasons, plaintiff's motion to amend the complaint is
3 GRANTED. The Clerk is DIRECTED to file Exhibit A of Docket Number 72 as plaintiff's first
4 amended complaint. Each defendant shall file an answer within fourteen days of being served
5 this order.

6 IT IS SO ORDERED.

7 DATED: June 9, 2011.

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10 UNITED STATES DISTRICT JUDGE
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