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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ROBERT SEGALMAN,

No. 2:11-cv-01800-MCE-CKD

Plaintiff,

v.

MEMORANDUM AND ORDER

SOUTHWEST AIRLINES CO.,

Defendant.

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Plaintiff Robert Segalman ("Plaintiff") initiated this action on July 8, 2011. Presently before the Court are Defendant Southwest Airline's ("Defendant") Motion to Dismiss Plaintiff's First Amended Complaint ("Defendant's Motion") and Plaintiff's Motion for Leave to File a Second Amended Complaint ("Plaintiff's Motion"). For the following reasons, Plaintiff's Motion is GRANTED and Defendant's Motion is DENIED as moot.<sup>1</sup>

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<sup>1</sup> Because oral argument will not be of material assistance, the Court orders this matter submitted on the briefs. E.D. Cal. Local Rule 230(g).

1 **BACKGROUND**

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3 According to Plaintiff, who has Cerebral Palsy and can  
4 neither walk nor talk aloud, he has been injured on multiple  
5 occasions by Defendant airline's improper stowage and transport  
6 of his power wheelchair during the course of his various flights.  
7 For example, in one instance, Plaintiff arrived at his  
8 destination terminal to find his chair's seat belt broken.  
9 Plaintiff subsequently fell out of the chair and broke his shin  
10 in two places. On other occasions, Plaintiff's chair was  
11 returned to him with no power, so he was forced to utilize a  
12 manual wheelchair with the assistance of an attendant for  
13 extended periods of time. Accordingly, by way of his currently  
14 operative First Amended Complaint ("FAC"), Plaintiff alleges  
15 three causes of action against Defendant for: 1) violation of the  
16 Air Carrier Access Act of 1986 ("ACAA"), 49 U.S.C. § 41705;  
17 2) discriminatory practices in public accommodations, California  
18 Civil Code §§ 51, 52, 54, 54.1, 54.3; and 3) negligence.

19 Defendant has now moved to dismiss Plaintiff's FAC arguing  
20 first that Plaintiff's state law claims are preempted by the ACAA  
21 and, second, that Plaintiff has no private right of action under  
22 federal law. Plaintiff opposed Defendant's Motion and filed his  
23 own Motion seeking leave to amend. According to Plaintiff,  
24 "[w]hile it is true the ACAA preempts state law disability  
25 discrimination claims as to liability informing conduct and the  
26 standard of care as to negligence, it does not in every instance  
27 preempt state law remedies." Plaintiff's Opposition, 5:4-6  
28 (emphasis in original).

1 Plaintiff thus "requests leave to amend to remove [those]  
2 allegations, to remove the ACAA claim and to add an ADA claim."  
3 Id., 5:8-9. Plaintiff nonetheless still argues that "dismissal  
4 of the state law remedies is improper." Id., 5:9-10.

5 For its part, Defendant opposes Plaintiff's Motion "because  
6 an amended pleading would be futile, and the complaint would be  
7 subject to dismissal." Defendant's Opposition, 2:12-13. More  
8 specifically, Defendant contends Plaintiff's state law claims as  
9 alleged in the proposed SAC, like those in the FAC, are still  
10 preempted by the ACAA and that airlines are excluded from the  
11 ADA's reach. Id., 2:13-18. For the following reasons, the Court  
12 rejects Defendant's arguments as premature and hereby GRANTS  
13 Plaintiff's Motion.

#### 14 15 **ANALYSIS** 16

17 "The court should freely give leave [to amend] when justice  
18 so requires." Fed. R. Civ. P. 15(a)(2). "This policy is to be  
19 applied with extreme liberality." Eminence Capital, LLC v.  
20 Aspeon, Inc., 316 F.3d 1048, 1051 (internal citations and  
21 quotations omitted). Indeed, absent "undue delay, bad faith or  
22 dilatory motive on the part of the movant, ...undue prejudice to  
23 the opposing party by virtue of allowance of the amendment, [or]  
24 futility of the amendment..." leave to amend should be granted.  
25 Foman v. Davis, 371 U.S. 178, 182 (1962); Eminence Capital,  
26 316 F.3d at 1052 (listing the Foman factors as those to be  
27 considered when deciding whether to grant leave to amend).

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1 Denying leave to amend is proper only if it is clear that "the  
2 complaint could not be saved by any amendment." Intri-Plex  
3 Techs., Inc. v. Crest Group, Inc., 499 F.3d 1048, 1056 (9th Cir.  
4 2007) (internal citations and quotations omitted).

5       Having considered all of the above factors, the Court now  
6 holds that leave to amend is warranted. First, there is no  
7 evidence before the Court, nor does Defendant argue, that  
8 Plaintiff filed his instant Motion in bad faith or with a  
9 dilatory motive. In addition, the fact Plaintiff's claims are of  
10 great import not just to him but to the public further supports  
11 granting leave to amend here. Moreover, given that this  
12 litigation is in its infancy, Defendant will suffer no prejudice  
13 if Plaintiff is permitted to amend. Perhaps recognizing as much,  
14 Defendant's only argument in opposition to Plaintiff's Motion is  
15 that amendment would be futile. See Plaintiff's Opposition,  
16 7:2-5. This Court is unwilling, however, to make that  
17 determination on less than a full record. Accordingly, for the  
18 reasons just stated, Plaintiff's Motion to Amend is GRANTED.

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1 **CONCLUSION**

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3 For the reasons just stated, Plaintiff's Motion to Amend  
4 (ECF No. 17) is GRANTED, and Defendant's Motion to Dismiss (ECF  
5 No. 16) is DENIED as moot. Plaintiff shall file his Second  
6 Amended Complaint not later than five (5) days following the date  
7 this Memorandum and Order is electronically filed.

8 IT IS SO ORDERED.

9 Dated: June 19, 2012

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12 MORRISON C. ENGLAND, JR.  
13 UNITED STATES DISTRICT JUDGE  
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