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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ROBERT SEGALMAN,  
Plaintiff,  
v.  
SOUTHWEST AIRLINES CO.,  
Defendant.

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

**ORDER**

Through this action, Plaintiff Robert Segalman (“Plaintiff”) alleges several causes of action against Defendant Southwest Airlines (“Defendant”) based on Defendant’s alleged improper handling of Plaintiff’s electronic wheelchair. On October 24, 2012, the Court dismissed Plaintiff’s Second Amended Complaint without leave to amend. ECF No. 36. The United States Court of Appeals for the Ninth Circuit subsequently affirmed in part, vacated in part, and remanded the action. ECF No. 43.

Plaintiff filed a Third Amended Complaint (“TAC”) setting forth claims for four causes of action: (1) a violation of the Air Carrier Access Act (“the ACAA”), 49 U.S.C. § 41705; (2) violations of “California Accessibility Laws”; (3) negligence; and (4) a violation of California’s Unfair Competition Law, California Business and Professions Code section 17200 et seq. Defendant responded by filing a Motion to Dismiss the first, second, and fourth causes of action pursuant to Federal Rule of Civil Procedure

1 12(b)(6),<sup>1</sup> which was granted leaving only Plaintiff's negligence claim for adjudication.<sup>2</sup>  
2 Now pending before the Court is Plaintiff's Motion to Dismiss his last remaining claim  
3 without prejudice so he can pursue an appeal. ECF No. 62. Defendant does not  
4 oppose dismissal, but argues that it should be with prejudice. The Court agrees with  
5 Defendant.

6 Given the protracted litigation that has already occurred in this case, and on this  
7 extensive record, the Court is not willing to dismiss a cause of action without prejudice  
8 over the objection of the opposing party. Nor has Plaintiff shown that any economies will  
9 be preserved by dismissing his negligence claim now rather than continuing to litigate it  
10 through judgment. Accordingly, since Plaintiff specifically requested dismissal without  
11 prejudice, the Plaintiff's Motion is DENIED.<sup>3</sup> Plaintiff is free to either file a renewed  
12 motion seeking dismissal with prejudice or to proceed with litigation in this Court.

13 IT IS SO ORDERED.

14 **DATED: SEPTEMBER 23, 2016**

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16 MORRISON C. ENGLAND, JR.  
17 UNITED STATES DISTRICT JUDGE

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<sup>1</sup> All subsequent references to "Rule" are to the Federal Rules of Civil Procedure.

<sup>2</sup> Defendant also asked that the Court strike various individual allegations, which requests were denied.

<sup>3</sup> Because oral argument would not have been of material assistance, the Court ordered this matter submitted on the briefs. See E.D. Cal. Local R. 230(g).