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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

VICTOR ALBAUM,

Plaintiff,

v.

MILLBRAE PARADISE OWNERS
ASSOCIATION, et al.,

Defendants.

Case No. [17-cv-01087-EMC](#)

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF’S
MOTION FOR LEAVE TO AMEND**

Docket No. 63

Plaintiff Victor Albaum has filed suit against the following entities and persons: Millbrae Paradise Owners Association; AGH Realty Group Corp.; George Lam; Suzanne Lo; and Derrick Lee. The claims asserted in the original complaint relate to disability discrimination in housing, more specifically, at Millbrae Paradise Condominiums where Mr. Albaum rented a condo. *See, e.g.*, Compl. ¶ 7 (alleging disability based on diabetes which has required Mr. Albaum to undergo a number of foot surgeries; “he is unable to walk long distances and even short distances present great difficulty for him”); Compl. ¶ 1 (alleging that Defendants failed to make reasonable accommodations in the subject property, Millbrae Paradise Condominiums).

Mr. Albaum initiated this lawsuit – represented by the Frankovich law firm – in March 2017. In June 2017, the Frankovich law firm moved to withdraw as counsel; the Court granted the motion in September 2017. *See* Docket No. 31 (motion); Docket No. 54 (order). In November 2017, Mr. Albaum filed the currently pending motion for leave to amend. Mr. Albaum asks to add three individuals as defendants to the case – namely, Irene Lee, Angela Y. Chang, and Aaron Lee. These individuals are all related to or affiliated with Derrick Lee.

Having considered the parties’ briefs, the Court hereby **GRANTS** in part and **DENIES** in part the motion for leave to amend.

1 **I. FACTUAL & PROCEDURAL BACKGROUND**

2 As alleged in the complaint (filed while Mr. Albaum still had counsel), Millbrae Paradise
3 Owners Association (“MPOA”), AGH Realty Group Corp. (“AGH”), Mr. Lam, and Ms. Lo are
4 the owners, operators, and/or managers of the Millbrae Paradise Condominiums. *See* Compl. ¶¶
5 8-11. Derrick Lee owns one of the condo units in the Millbrae Paradise Condominiums. *See*
6 Compl. ¶ 12. Derrick Lee rented his unit to Mr. Albaum, his wife, and his son. *See* Compl. ¶ 21.

7 Mr. Albaum was given the use of a parking space in the Millbrae Paradise Condominiums.
8 The parking space was located underground. While the parking space was close to an elevator, he
9 was not able to use the elevator “with any consistency or predictability” because it was not
10 properly maintained and, even when functional, it was frequently reserved by other residents as it
11 is a freight elevator, located near a truck loading dock. *See* Compl. ¶ 21.

12 Mr. Albaum complained to Defendants, particularly Mr. Lam and Ms. Lo but to no avail.
13 *See* Compl. ¶¶ 22-23. He therefore began to use the disabled parking space located near other
14 elevators. Based on his use of that space, the MPOA issued a warning notice, informing him that
15 he had to move his car or it would be wheel-locked and he would be fined to have that lock
16 removed. *See* Compl. ¶ 24. After receiving the notice, Mr. Albaum spoke with Mr. Lam and Ms.
17 Lo and explained that he was disabled. He requested an accommodation based on his disability –
18 *i.e.*, a parking space closer to other elevators. That request was not granted. *See* Compl. ¶¶ 25-27.

19 Mr. Albaum therefore continued to use the disabled parking space which, by that time, was
20 marked as for commercial customers only. (There are some commercial residents in the Millbrae
21 Paradise Condominiums.) The MPOA thereafter issued another warning notice to him. Because
22 of the second notice, Mr. Albaum was forced to return to use of his designated parking space
23 which required him to walk a significant distance (for his disability) in order to reach a functional
24 elevator. *See* Compl. ¶¶ 28-32.

25 Subsequently, Mr. Albaum asked Defendants again for a reasonable accommodation. *See*
26 Compl. ¶ 33. Derrick Lee claimed that that decision was for AGH to make, not him. *See* Compl.
27 ¶ 41. The MPOA responded that it was unable to grant the request and that only Derrick Lee was
28 in a position to assist him. *See* Compl. ¶ 42.

1 denial of leave to amend”). “Prejudice is the ‘touchstone of the inquiry under rule 15(a).’ Absent
2 prejudice, or a strong showing of any of the remaining *Foman* factors, there exists a presumption
3 under Rule 15(a) in favor of granting leave to amend.” *Eminence*, 316 F.3d at 1052.

4 As noted above, in the instant case, Mr. Albaum seeks to add three new defendants to the
5 case, more specifically, Irene Lee, Angela Y. Chang, and Aaron Lee. All are related to and/or
6 affiliated with Derrick Lee (the owner of the condo unit that Mr. Albaum rented). Not
7 surprisingly, it is only Derrick Lee who has opposed the motion to amend.

8 Irene Lee appears to be Derrick Lee’s mother. *See* Mot., Ex. B (email). Mr. Albaum has
9 provided documents indicating that (1) Irene Lee signed the landlord-tenant agreement (from
10 December 2014) between Derrick Lee and Mr. Albaum, on Derrick Lee’s behalf. *See* Mot., Ex. A
11 (agreement), and that (2) in December 2015, Irene Lee sent an email to Mr. Albaum, informing
12 him that she had taken over managing the books for Derrick Lee. *See* Mot., Ex. B (email). The
13 original complaint contains one allegation related to Irene Lee – *i.e.*, claiming that she sent an
14 email to Mr. Albaum advising that Mr. Albaum and Derrick Lam try to resolve their conflict
15 informally.

16 Angela Y. Chang appears to be Derrick Lee’s wife. *See* Mot., Ex. C (grant deed). Mr.
17 Albaum has provided a document indicating that she and Derrick Lee own half of the condo unit
18 at issue; the other half appears to be owned by Aaron Lee. *See* Mot., Ex. C (grant deed).

19 In his opposition to the motion to amend, Derrick Lee argues that the motion should be
20 denied based on futility. Derrick Lee argues that documents already produced to Mr. Albaum
21 establish that he has no viable cause of action against any of the *current* defendants in the case –
22 *i.e.*, because they have “no legal basis or power to transfer or otherwise re-assign their property
23 rights to accommodate him.” Mot. at 2; *see also* Mot. at 3 (asserting that “each residential and
24 commercial parking space at the Millbrae Paradise property (including handicap parking spaces)
25 [is] reserved as an Exclusive Use Common Area and is granted and deeded to an owner as an
26 exclusive use easement appurtenant to the owner’s corresponding residential or commercial unit”).
27 Derrick Lee adds that adding the proposed new defendants to the case will not change this
28 problem.

1 Derrick Lee’s position is not convincing. Derrick Lee may well be right that Mr. Albaum
2 will ultimately lose on the merits but, at this point, Derrick Lee has not done enough to show that
3 Mr. Albaum will as a matter of law lose on the merits. Derrick Lee is effectively asking the Court
4 to prejudge a motion to dismiss by the current defendants in the case, but no such motion is
5 pending before the Court.

6 Moreover, Mr. Albaum has a plausible basis for adding at least Angela Y. Chang and
7 Aaron Lee as defendants to the case. They, along with Derrick Lee, have an ownership interest in
8 the condo unit at issue. One of Mr. Albaum’s theories is that the owners of the condo were
9 responsible to do something to help him (*i.e.*, to accommodate his disability).

10 Naming new defendant Irene Lee, however, is problematic. At this point, Mr. Albaum has
11 not articulated a plausible basis for holding her accountable for failure to accommodate. She does
12 not have an ownership interest in the condo unit. Although she apparently manages the books for
13 Derrick Lee, that is not enough to give rise to a reasonable inference that, *e.g.*, she had decision-
14 making authority as to whether Mr. Albaum’s accommodation request should have been granted.
15 In his reply, Mr. Albaum notes that Derrick Lee identified Irene Lee as a witness in his initial
16 disclosures. *See* Reply, Ex. D (initial disclosures). But just because she is a witness does not
17 mean that she should also be a defendant.

18 **III. CONCLUSION**

19 For the foregoing reasons, the Court shall allow Mr. Albaum to amend his complaint, but
20 only to add Angela Y. Chang and Aaron Lee as defendants. Irene Lee shall not be added as a
21 defendant.

22 Mr. Albaum shall file his amended complaint within two weeks of the date of this order.
23 Mr. Albaum is advised that the only permitted amendment is new allegations as to who Angela Y.
24 Chang and Aaron Lee are, the basis for their alleged liability, and what claims are being asserted

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against them. Mr. Albaum shall serve his amended complaint on Angela Y. Chang and Aaron Lee within three weeks of the date of this order.

This order disposes of Docket No. 63.

IT IS SO ORDERED.

Dated: January 4, 2018


EDWARD M. CHEN
United States District Judge