

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

FRANCISCA MORALEZ,
Plaintiff,

No. C 17-05127 WHA

v.

**ORDER GRANTING MOTION
FOR LEAVE TO AMEND**

WAL-MART STORES INC., dba
WALMART SUPERCENTER, and
WAL-MART REAL ESTATE BUSINESS
TRUST, a Delaware Business Trust,
Defendants.

INTRODUCTION

In this ADA action, plaintiff seeks leave to file a first amended complaint. Defendants oppose. For the reasons stated below, the motion is **GRANTED**.

STATEMENT

Plaintiff Francisca Moralez initiated this action in September 2017 against defendants Wal-Mart Stores, Inc. and Wal-Mart Real Estate Business Trust. She alleged, among other claims, four violations of Title III of the Americans with Disabilities Act at a Wal-Mart store in Antioch. In January 2018, the parties conducted a joint inspection of the store pursuant to General Order 56. In February, plaintiff provided Wal-Mart with a list of 71 alleged ADA violations discovered during the joint inspection. On March 29, the deadline set by the case management order, plaintiff filed the instant motion.

1 This order follows full briefing. Pursuant to Civ. L.R. 7-1(b), this order finds plaintiff's
2 motion suitable for submission without oral argument and hereby **VACATES** the hearing
3 scheduled for May 17.

4 **ANALYSIS**

5 Plaintiff seeks leave to file a first amended complaint adding allegations regarding
6 access barriers identified during the parties' joint inspection. FRCP 15(a)(2) permits a party to
7 amend its pleading with the court's leave, stating that "[t]he court should freely give leave
8 when justice so requires." In the FRCP 15 context, our court of appeals has instructed that
9 "[f]ive factors are frequently used to assess the propriety of a motion for leave to amend: (1)
10 bad faith, (2) undue delay, (3) prejudice to the opposing party, (4) futility of amendment[,] and
11 (5) whether plaintiff has previously amended his complaint." *Allen v. City of Beverly Hills*,
12 911 F.2d 367, 373 (9th Cir. 1990). These factors weigh in favor of granting leave.

13 *First*, Wal-Mart argues that the proposed amendment is a delay tactic through which
14 plaintiff seeks to prolong the lawsuit and increase attorney's fees. Wal-Mart also complains
15 that plaintiff's motion comes six months after her original complaint and almost three months
16 after the joint site inspection. Although plaintiff fails to explain her delay in waiting months
17 after the site inspection to seek amendment, this order declines to find either bad faith or undue
18 delay. The original complaint alleged that plaintiff would seek to amend once she identified
19 other barriers (Compl. ¶ 11). Plaintiff also seeks leave to amend within the deadline set forth
20 in the case management order.¹

21 *Second*, the party opposing amendment bears the burden of showing prejudice. *DCD*
22 *Programs, Ltd. v. Leighton*, 833 F.2d 183, 187 (9th Cir. 1987). Wal-Mart's opposition fails to
23 do so. Again, the initial complaint provided Wal-Mart notice that plaintiff would amend the
24 complaint to allege the existence of additional barriers upon their discovery. This order
25 disagrees that plaintiff should file her new allegations in a separate lawsuit rather than seek to
26 amend the complaint. As our court of appeals has recognized, "[i]t makes no sense to require a
27

28 ¹ Wal-Mart's request that this order find that "no fees and costs generated to date by Plaintiff can be considered reasonable in this case" is **DENIED**.

1 disabled plaintiff to challenge, in separate cases, multiple barriers in the same facility,
2 controlled by the same entity, all related to the plaintiff's specific disability." *Doran v.*
3 *7-Eleven, Inc.*, 524 F.3d 1034, 1047 (9th Cir. 2008).


4 *Third*, Wal-Mart characterizes plaintiff's proposed amendments as "baseless" and
5 "lack[ing] merit," but fails to identify which new allegations it contends are futile or explain
6 why such amendments are insufficient under the ADA. This is also plaintiff's first
7 amendment. These factors accordingly weigh in favor of granting the motion.

8 **CONCLUSION**

9 For the reasons stated above, plaintiff's motion for leave to amend the complaint is
10 **GRANTED**. Plaintiff shall file the first amended complaint attached to her motion as a separate
11 docket entry by **MAY 7**.

12
13 **IT IS SO ORDERED.**

14
15 Dated: May 1, 2018.

16 
17 _____
18 WILLIAM ALSUP
19 UNITED STATES DISTRICT JUDGE
20
21
22
23
24
25
26
27
28