

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

3
4 CRAIG YATES,

No. C 10-3073 CW

5 Plaintiff,

ORDER GRANTING
PLAINTIFF'S MOTION
FOR LEAVE TO AMEND
(Docket No. 49)

6 v.

7 DELANO RETAIL PARTNERS, LLC,
8 doing business as DELANO'S IGA
9 MARKET #1; and ARTHUR S. BECKER,
as Trustee of the ARTHUR S.
BECKER REVOCABLE LIVING TRUST,

10 Defendants.

11 _____/
12 Plaintiff Craig Yates moves for leave to file a first amended
13 complaint. Defendant Arthur S. Becker, as Trustee of the Arthur
14 S. Becker Revocable Living Trust, opposes Plaintiff's motion. The
15 motion was taken under submission on the papers. Having
16 considered the papers filed by the parties, the Court GRANTS
17 Plaintiff's motion.

18 BACKGROUND

19 Plaintiff initiated this case on July 13, 2010, against
20 Defendants Delano Retail Partners, LLC, a company which rents the
21 property and operates Delano's Market in San Francisco,
22 California, and Arthur S. Becker, Trustee of the Arthur S. Becker
23 Revocable Trust, the owner of the property and landlord to Delano
24 Retail Partners. Plaintiff alleges that he is a person with
25 physical disabilities and brings this action against Defendants
26 for failure to remove architectural barriers at the Delano's
27 Market, thereby denying him and others with physical disabilities
28 access to, and full and equal enjoyment of, the grocery store on

1 August 19, 2009, March 27, 2010, May 6, 2010, May 16, 2010 and
2 June 6, 2010. Plaintiff asserts claims for injunctive relief and
3 statutory damages under the Americans with Disabilities Act of
4 1990 (ADA), 42 U.S.C. § 12101, et seq., the Unruh Civil Rights
5 Act, California Civil Code §§ 51, 51.5, California Health and
6 Safety Code §§ 19955, et seq., and the California Disabled Persons
7 Act, California Civil Code §§ 54, 54.1 and 54.3.

8 On February 10, 2012, Plaintiff filed a notice that Delano
9 Retail Partners had filed for bankruptcy and was entitled to an
10 automatic stay. See Docket No. 33.

11 In a case management statement filed on February 15, 2012,
12 Plaintiff stated that Delano Retail Partners "had entered into an
13 injunctive relief agreement" with Plaintiff "to remove barriers
14 and in fact removed barriers." Joint Case Management Statement,
15 Docket No. 34, 3. Because "[t]he remedial repairs have been
16 completed," Plaintiff no longer seeks injunctive relief and seeks
17 only "statutory damages, attorneys' fees, costs and litigation
18 expenses." Id. at 7. Plaintiff also stated that he intended to
19 "amend the complaint to name Ralphs Grocery Company which was not
20 disclosed in Rule 26 and for post complaint visits where he
21 encountered barriers." Id. at 4.

22 On March 22, 2012, the Court held an initial case management
23 conference. Minute Order and Case Management Order, Docket No.
24 46, 1. At the case management conference, the Court directed
25 Plaintiff to provide a copy of his proposed amended complaint to
26 Becker by April 5, 2012 to allow Becker to determine if he would
27 stipulate to the amendment. Id. The Court ordered that, if he
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1 was unable to obtain a stipulation, Plaintiff was to file his
2 motion for leave to amend the complaint by April 12, 2012. Id.

3 On April 3, 2012, Plaintiff's counsel emailed a copy of his
4 proposed first amended complaint to Becker and requested that
5 Becker stipulate to its filing. Frankovich Decl. in Supp. of Ex
6 Parte Appl. ¶ 2, Docket No. 55.

7 On April 12, 2012, having received no response from Becker,
8 Plaintiff filed the instant motion for leave to amend. Id. at
9 ¶ 3; Docket No. 49.

10 On April 26, 2012, Becker filed an opposition to Plaintiff's
11 motion, noting, among other things, that Plaintiff had not filed
12 his proposed amended complaint in the docket of the case. Docket
13 No. 51.

14 On April 27, 2012, Plaintiff filed his proposed first amended
15 complaint. Docket No. 52.

16 On May 2, 2012, Plaintiff filed an ex parte application to
17 continue the hearing on his motion for leave to amend and to
18 extend the time for Becker to respond. Docket No. 54. In the
19 application, Plaintiff noted that, while he had sent a copy of the
20 proposed first amended complaint to Becker on April 3, he had
21 inadvertently failed to file it with his motion. Id.

22 On May 4, 2012, the Court granted Plaintiff's ex parte
23 application. Docket No. 57.

24 On May 16, 2012, Becker filed a revised opposition to
25 Plaintiff's motion. Docket No. 59.

26 On May 24, 2012, Plaintiff filed his reply to Becker's
27 revised opposition. Docket No. 60.

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1 LEGAL STANDARD

2 Federal Rule of Civil Procedure 15(a) provides that leave of
3 the court allowing a party to amend its pleading "shall be freely
4 given when justice so requires." Because "Rule 15 favors a
5 liberal policy towards amendment, the nonmoving party bears the
6 burden of demonstrating why leave to amend should not be granted."
7 Genentech, Inc. v. Abbott Laboratories, 127 F.R.D. 529, 530-531
8 (N.D. Cal. 1989) (citing Senza-Gel Corp. v. Seiffhart, 803 F.2d
9 661, 666 (Fed. Cir. 1986)). Courts consider five factors when
10 assessing the propriety of a motion for leave to amend: undue
11 delay, bad faith, futility of amendment, prejudice to the opposing
12 party and whether the plaintiff has previously amended the
13 complaint. Ahlmeier v. Nev. Sys. of Higher Educ., 555 F.3d 1051,
14 1055 n.3 (9th Cir. 2009). Delay is "not alone enough to support
15 denial." Morongo Band of Mission Indians v. Rose, 893 F.2d 1074,
16 1079 (9th Cir. 1990).

17 DISCUSSION

18 Becker first argues that Plaintiff's motion for leave to
19 amend should be denied, because he failed to state exhaustively
20 and with particularity in his motion the additional allegations
21 that he sought to add to his complaint, in violation of Rule 7.

22 In relevant part, Rule 7(b)(1) requires that a motion must
23 "state with particularity the grounds for seeking the order; and
24 state the relief sought." Federal Rule of Civil Procedure
25 7(b)(1). "The purpose of the particularity requirement in Rule 7
26 is to afford notice of the grounds and prayer of the motion to
27 both the court and to the opposing party, providing that party
28 with a meaningful opportunity to respond and the court with enough

1 information to process the motion correctly." Registration
2 Control Systems, Inc. v. Compusystems, Inc., 922 F.2d 805, 807
3 (Fed. Cir. 1990). The requirement "should not be applied in an
4 overly technical fashion when the purpose behind the rule is not
5 jeopardized." Hinz v. Neuroscience, Inc., 538 F.3d 979, 983 (8th
6 Cir. 2008) (internal citations and quotations omitted). See also
7 Feldberg v. Quechee Lakes Corp., 463 F.3d 195, 197 (2d Cir. 2006)
8 ("The particularity requirement is flexible and has been
9 interpreted liberally by the courts.") (internal citations and
10 quotations omitted). Courts generally consider "whether any party
11 has been prejudiced by the movant's lack of particularity and
12 whether the court can comprehend the basis of the motion and deal
13 with it fairly." 5 Wright & Miller, Federal Practice and
14 Procedure § 1192. See also 2 James Wm. Moore, Moore's Federal
15 Practice § 7.03[4][a] ("Motions worded very generally have been
16 found sufficiently particular when the opposing party had notice
17 of the specific basis for the motion").

18 Although Plaintiff did not directly state in his motion that
19 he sought leave to amend his complaint to add violations that
20 occurred on dates not previously specified, he provided sufficient
21 notice thereof to Becker and to the Court to allow Becker a fair
22 and meaningful opportunity to oppose the motion and to allow the
23 Court to address it adequately. Prior to filing his motion,
24 Plaintiff clearly stated in the parties' joint case management
25 statement that he intended to amend the complaint to add
26 allegations related to additional visits to the grocery store. He
27 provided Becker a copy of the proposed amended complaint prior to
28 filing his motion, more than three weeks before the original

1 deadline for Becker to file his opposition. Further, Becker was
2 allowed an additional opportunity to oppose the motion after the
3 proposed amended complaint was filed in the docket of this case.
4 Accordingly, the Court rejects Becker's argument that the instant
5 motion fails in whole or in part under Rule 7.

6 Becker further contends that Plaintiff's motion impermissibly
7 discloses confidential statements made in mediation in violation
8 of the standard confidentiality agreement signed by the parties in
9 connection with mediation through the Court's Alternative Dispute
10 Resolution (ADR) program. Becker states that Plaintiff has
11 disclosed confidential information in his present motion by
12 stating that he "learned by unorthodox means that Ralph's Grocery
13 Store is supposedly the holder of the master lease," because he
14 learned this during a conversation in mediation. Revised Opp. at
15 4.

16 In the confidentiality agreement, the parties agreed "that
17 they shall treat as 'confidential information' anything that
18 happened or was said in connection with the ADR session," and that
19 such information would "not be disclosed to the assigned judge,
20 and shall not be used for any purpose, including impeachment in
21 any pending or future purpose," subject to certain exceptions in
22 the ADR Local Rules. Chilleen Decl., Ex. A. However, the parties
23 further agreed "that evidence admissible or subject to discovery
24 or disclosure shall not be inadmissible or protected from
25 disclosure solely by reason of its introduction or use" in
26 mediation. Id. That Ralph's Grocery is an interested party and
27 the actual leaseholder is a required disclosure. See, e.g.,
28 Federal Rule of Civil Procedure 26(a)(1)(A); Civil Local Rule

1 3-16(b); Standing Order for All Judges of the Northern District of
2 California ¶ 19. Thus, that this fact was first disclosed at a
3 mediation session, instead of in the form that it should have been
4 disclosed, does not create an absolute bar to Plaintiff referring
5 to it.

6 Becker also argues that the proposed amendments were made in
7 bad faith and are futile, because Plaintiff has not removed his
8 demand for injunctive relief from his amended complaint, although
9 Plaintiff has acknowledged that remedial repairs have been
10 completed and that he is no longer asking the Court to award such
11 relief. The request for injunctive relief is in the original
12 complaint, see, e.g., Compl. ¶¶ 25, 44, 62, and is not added by
13 the amendment. Thus, Defendant has not established that any
14 amendment to the complaint would be in bad faith or futile.
15 Further, Plaintiff has adequately explained his desire to maintain
16 the allegations related to injunctive relief in that they are
17 material to, and incorporated into, his continuing claims for
18 attorneys' fees under the ADA and for damages and attorneys' fees
19 under state law.

20 Finally, Becker contends that amendment would unduly
21 prejudice him. Becker first argues that it would prejudice him to
22 have to defend against the request for injunctive relief; however,
23 again, this request is not added by the proposed amendment and
24 would exist in the complaint, even if leave to amend were denied.
25 Becker does not explain how any allegation added to the complaint
26 would increase his discovery burdens. While Plaintiff concedes
27 that amendment would likely require amendment of the scheduling
28 order to allow the new defendant to conduct discovery, any

1 prejudice from the possible adjustment of case management
2 deadlines is outweighed by the additional time and expense that
3 would ensue if Plaintiff filed a new lawsuit against Ralph's
4 Grocery arising out of the same events at issue here.

5 CONCLUSION

6 For the reasons set forth above, the Court GRANTS Plaintiff's
7 motion for leave to file the first amended complaint (Docket No.
8 49). Plaintiff shall file it forthwith and serve it as soon as
9 possible, but in no later than twenty-eight days.

10 The Court finds good cause to amend the case management
11 schedule as follows:

<u>Event</u>	<u>Date</u>
Completion of fact discovery	September 6, 2012
Disclosure of identities and reports of expert witnesses	August 8, 2012
Completion of expert discovery	September 6, 2012

16 The Court maintains the other dates in the case management
17 schedule at this time, including the further case management
18 conference and hearing on case-dispositive motions, which are
19 scheduled to occur on October 25, 2012 at 2:00 p.m.
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The Court will entertain a stipulation or a motion to change the case management schedule, provided that opposing briefs on the dispositive motions are filed in series as described in the case management order, Docket No. 46, not contemporaneously, that the parties' briefing is completed at least two weeks prior to the hearing date, and that the hearing on the motions for summary judgment takes place at least three months before the start of trial.

IT IS SO ORDERED.

Dated: 6/28/2012



CLAUDIA WILKEN
United States District Judge