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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

ABIGAYIL TAMARA,  
  
Plaintiff,  
  
v.  
  
EL CAMINO HOSPITAL; DAVID DIGANT;  
and DOES 1-20, Inclusive,  
  
Defendant.

Case No. C-12-01032-RMW

**ORDER GRANTING MOTION TO  
FILE AMENDED COMPLAINT**

[Re Docket No. 19]

On December 21, 2012, plaintiff Abigayil Tamara filed a motion to amend her complaint to add factual allegations and drop a request for injunctive relief under Civil Code section 55, replacing it with a new cause of action under California Unfair Competition Law. Pl.'s Br. 2, Dkt. 19. Defendants, who have filed an answer to plaintiff's original complaint, have neither stipulated to the amendment nor filed an opposition to plaintiff's request. Def.'s Resp., Dkt. 11; Pl.'s Br. 2. The court will decide the issue without oral argument. N.D. Cal. Civ. R. 7-1(b). Having considered all written materials submitted, plaintiff's motion is GRANTED.

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2 **I. DISCUSSION**

3 **A. Legal Standard**

4 Under Rule 15 of the Federal Rules of Civil Procedure, once an answer has been filed, a  
5 party may amend a pleading only by leave of court or by written consent of the adverse party. *See*  
6 Fed.R.Civ.P. 15(a). A court “should freely give leave [to amend] when justice so requires.” *Id.*

7 The United States Supreme Court has stated:

8 In the absence of any apparent or declared reason—such as undue delay, bad faith or  
9 dilatory motive on the part of the movant, repeated failure to cure deficiencies by  
10 amendments previously allowed, undue prejudice to the opposing party by virtue of  
allowing the amendment, futility of the amendment, etc.—the leave sought should, as the  
rules require, be “freely given.”

11 *Foman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962).

12 This policy is “to be applied with extreme liberality.” *Eminence Capital, LLC v. Aspeon,*  
13 *Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (citations omitted). Absent prejudice or a strong  
14 showing under one of the other *Foman* factors, “there exists a presumption under rule 15(a) in  
15 favor of granting leave to amend.” *Id.*

16 **B. Analysis**

17 Plaintiff, a person with disability, had alleged in her original complaint that defendants  
18 unlawfully prohibited her service dog from entry into the psychiatric ward of the hospital.  
19 Compl., Dkt. 1. The proposed First Amended Complaint (FAC) makes new allegations of  
20 physical barriers to access, limited to guest rooms only. Pl.'s Br. 3. In addition, the proposed  
21 FAC drops claims under Civil Code section 55 and replaces it with claims under California  
22 Business and Professions Code section 172000 *et seq.*, the Unfair Competition Law. Pl.'s Br. 4.  
23 Although defendants refused to stipulate, records indicate that they were informed of the  
24 proposed amendments as early as November 7, 2012. Decl. of Celia McGuinness, Dkt. 20.  
25 Furthermore, plaintiff contends that defendants will not be prejudiced by the amendment and that  
26 it will not cause undue delay. Pl.'s Br. 6.

27 Because defendants have not filed an opposition to plaintiff's motion, the court's decision  
28 is based on its review of the pleadings and docket in this matter. Having considered the