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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

LUIS ROSADO, individually, and on behalf of other members of the general public similarly situated, 　　　　　　Plaintiff, 　v. EBAY INC., 　　　　　　Defendant.	Case No.: 5:12-CV-04005-EJD **ORDER DENYING MOTION TO DISMISS; GRANTING MOTION FOR LEAVE TO AMEND PLEADINGS** **[Re: Docket Item Nos. 42, 47]**

On July 30, 2012 Plaintiff Luis Rosado ("Rosado") filed this class action. See Docket Item No. 1. Presently before this court is Defendant eBay Inc.'s ("eBay") Motion to Dismiss Plaintiff's First Amended Complaint. See Docket Item No. 42.

On October 20, 2012 Defendant eBay Inc. ("eBay") filed a motion to dismiss. See Docket Item No. 20. On December 17, 2012 the Court granted the parties' Stipulation to Amend Plaintiff's Complaint. See Docket Item No. 38. Plaintiff filed his First Amended Complaint ("FAC") on December 28, 2012. See Docket Item No. 41. Defendant filed this present Motion to Dismiss Plaintiff's FAC on January 31, 2013. See Docket Item No. 42. Plaintiff filed his opposition to Defendant's Motion to Dismiss, requesting leave to amend the FAC. See Docket Item No. 47.

1

Case No.: 5:12-CV-04005-EJD
ORDER DENYING MOTION TO DISMISS; GRANTING MOTION FOR LEAVE TO AMEND
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"[A] party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). "[R]ule 15's policy of favoring amendments to pleadings should be applied with extreme liberality." DCD Programs, Ltd. v. Leighton, 833 F.2d 183, 186 (9th Cir.1987) (internal citations and quotations omitted). In cases, however, where a party moves to amend or add a party after a specific deadline for filing motions or amending the pleadings, the "good cause standard" for modification of a scheduling order under Rule 16(b) governs. See Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 607–08 (9th Cir.1992).

Here, no deadline for amended pleadings was previously set by the court. The court therefore applies the more lenient Rule 15 standard.
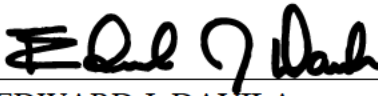
Plaintiff opposes eBay's Motion to Dismiss and seeks to amend his pleadings by clarifying factual allegations. eBay argues that Plaintiff should not be granted leave to amend his complaint because amendment would be futile and Plaintiff had a previous opportunity to amend his complaint. However, eBay's argument is insufficient to establish that amendment is futile or that it would cause undue delay.

Thus, in light of the generous standard in favor of amendments and the absence of any demonstrated prejudice resulting from the amendment,

IT IS HEREBY ORDERED that Plaintiff's motion for leave to amend his pleadings is GRANTED and Defendant's motion to dismiss is DENIED. Within 21 days from the date of this Order, Plaintiff must file an amended complaint. The hearing set for September 13, 2013 is VACATED.

IT IS SO ORDERED

Dated: September 10, 2013

EDWARD J. DAVILA
United States District Judge

2

Case No.: 5:12-CV-04005-EJD
ORDER DENYING MOTION TO DISMISS; GRANTING MOTION FOR LEAVE TO AMEND
PLEADINGS