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E-FILED: January 24, 2013

NOT FOR CITATION
 IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

CECIL SHAW,

No. C12-04687 HRL

Plaintiff,

**ORDER GRANTING PLAINTIFF'S
 MOTION FOR LEAVE TO FILE
 FIRST AMENDED COMPLAINT**

v.

LORENA SOTOMAYOR ET AL.,

(Dkt. 16)

Defendants.

Cecil Shaw sues for alleged violations of Title III of the Americans with Disabilities Act and related California law on account of defendants' failure to remove barriers to his access to a restaurant and liquor store. Before the Court is Plaintiff's motion for leave to file a First Amended Complaint. Defendants oppose the motion. All parties have expressly consented that all proceedings in this matter may be heard and finally adjudicated by the undersigned. 28 U.S.C. § 636(c); Fed. R. Civ. P. 73. Pursuant to Civil Local Rule 7-1(b), the Court finds this matter appropriate for determination without oral argument. Accordingly, the hearing set for January 29, 2013 is vacated.

Shaw filed this action on September 7, 2012 against Karan & N, Inc. dba Sylvan Liquors ("Sylvan Liquors"); Lorena Soto Mayor Deflores aka Lorena Soto Deflores dba Los Jalapenos ("Los Jalapenos"); and Corinne R. Wagner, Trustee of the Corinne R. Wagner 2002 Revocable Trust ("Wagner Trust"). He alleged that Sylvan Liquors and Los Jalapenos owned, leased and/or operated a liquor store, Sylvan Liquors, and a restaurant, Los Jalapenos. Sylvan Liquors and Los Jalapenos are part of the same shopping center, located at 820 E. El Camino Real, Mountain View, CA ("820

1 Shopping Center”). Plaintiff alleged that the Wagner Trust owned, operated and/or leased the 820
2 Shopping Center.

3 After the complaint was filed, Plaintiff learned that Kaptan Ghimire is the business owner of
4 Sylvan Liquors and that Sylvan Plaza LLC owns, operates and/or leases the 820 Shopping Center.
5 Plaintiff seeks leave to add Kaptan Ghimire and Sylvan Plaza LLC as defendants, claiming that they
6 are indispensable parties.

7 Federal Rule of Civil Procedure 15(a) states that, as here, once a responsive pleading has
8 been filed, a party may amend its pleading with the court’s leave, and “[t]he court should freely give
9 leave when justice so requires.” Fed. R. Civ. P. 15(a)(1)(B)(2). Leave to amend is granted with
10 “extreme liberality” although the court has discretion to deny leave to amend and can consider
11 whether there was bad faith on the part of plaintiff, undue delay, prejudice to the defendant or futility
12 of amendment. *See Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir.1990);
13 *Ascon Properties, Inc. v. Mobil Oil Co.*, 866 F.2d 1149, 1160 (9th Cir. 1989).

14 Having considered all of the papers submitted by the parties, this Court finds that leave to
15 amend is warranted. Discovery has yet to begin in this case. The named defendants contend that
16 approximately 54 days passed from when they identified the potential additional parties to when
17 Plaintiff filed the subject motion. During this time, however, the parties, as well as unnamed
18 defendants Kaptan Ghimire and Sylvan Plaza LLC, were engaged in settlement discussions. The
19 named defendants also claim prejudice because if the additional parties are named, a conflict of
20 interest would necessitate a change of counsel. This claim of prejudice is unavailing because of the
21 early stage of the case, and because the purported conflict would seem to exist regardless of the
22 proposed amendment. Plaintiff’s Motion for Leave to File First Amended Complaint is GRANTED.

23 **IT IS SO ORDERED.**

24 Dated: January 24, 2013

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27 _____
28 HOWARD R. LLOYD
UNITED STATES MAGISTRATE JUDGE

1 **C 12-04687 HRL Order will be electronically mailed to:**

2 Kenneth Randolph Moore: natalyn@moorelawfirm.com, marejka@moorelawfirm.com,
3 tanya@moorelawfirm.com

4 Mark Steven Carlquist: mark@carlquistlaw.com, marcia@carlquistlaw.com

5 Tanya Eugene Moore: tanya@moorelawfirm.com, jessica@moorelawfirm.com,
6 marejka@moorelawfirm.com, maribel@moorelawfirm.com, paralegal@moorelawfirm.com

6 **C 12-04687 HRL Notice will be mailed to:**

7 Lorena Soto Mayor DeFlores
8 600 Rainbow Drive
9 #164
10 Mountain View, CA

11 **Counsel are responsible for distributing copies of this document to co-counsel who have not**
12 **registered for e-filing under the court's CM/ECF program.**

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