

E-Filed: May 22, 2014

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7 NOT FOR CITATION
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 JOHN RODGERS,

No. C13-03923 HRL

12 Plaintiff,

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

13 v.

[Re: Docket No. 17]

14 CHEVY'S RESTAURANTS, LLC, a
Delaware limited liability company, d/b/a
15 CHEVY'S; A.C.D. INVESTMENTS, INC.,
a California corporation; and DOES 1-10,
16 Inclusive,

17 Defendants.

18 Plaintiff John Rodgers sues Chevy's Restaurants, LLC and A.C.D. Investments, Inc.
19 (collectively, "Defendants") for alleged denial of access under the Americans with Disabilities Act
20 (ADA). Pursuant to General Order 56 and the operative Scheduling Order, the parties held a joint
21 inspection but discovery is otherwise stayed, they engaged in mediation although the case did not
22 settle, and Rodgers requested a case management conference, which the Court set for June 10, 2014.
23 Concurrent with his request for a case management conference, Rodgers filed the instant motion for
24 leave to file a first amended complaint ("FAC"). *See* Dkt. No. 17. Defendants did not respond to
25 the motion.¹ The Court finds this matter suitable for determination without oral argument and
26 vacates the hearing set for May 27, 2014. *See* Civil L.R. 7-1(b). Based on the moving papers and
27 the record in this case, the Court GRANTS Rodgers' motion.

28 ¹ Defendants did not oppose this motion or file a statement of nonopposition pursuant to Civil L.R. 7-3.

1 If more than 21 days have passed since a responsive pleading was served, “a party may
2 amend its pleading only with the opposing party’s written consent or the court’s leave. The court
3 should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2). “Four factors are
4 commonly used to determine the propriety of a motion for leave to amend. These are: bad faith,
5 undue delay, prejudice to the opposing party, and futility of amendment. These factors, however,
6 are not of equal weight in that delay, by itself, is insufficient to justify denial of leave to amend.”
7 *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987) (citations omitted). “The party
8 opposing amendment bears the burden of showing prejudice.” *Id.* at 187.

9 Rodgers asserts that he has timely sought leave in good faith, Defendants will not be
10 prejudiced, and amendment is not futile. The proposed FAC adds forty-two (42) alleged
11 accessibility barriers revealed as a result of the joint inspection. Although the report on the joint
12 inspection was completed in January 2014, Rodgers maintains he did not seek leave to amend
13 sooner because he was confident the case would settle through mediation in April. When it became
14 apparent mediation would be unsuccessful, Rodgers immediately sought a stipulation from
15 Defendants, who failed to substantively respond over the course of a month. Thus, the Court finds
16 that Rodgers has moved for leave to amend in good faith, without undue delay. Additionally, the
17 Court does not believe that Defendants will be prejudiced by the amendment, and in any case, they
18 have failed to meet their burden to show that it would. Finally, adding new alleged barriers
19 discovered through the inspection that support Rodgers’ denial of access claim is not futile.
20 Accordingly, the four *Leighton* factors all weigh in Rodgers’ favor.

21 The Court GRANTS the motion for leave to file the first amended complaint. Rodgers’ shall
22 file the FAC as attached to his motion within two (2) days from the date of this order. Defendants
23 shall respond within fourteen (14) days of the filing of the FAC.

24 **IT IS SO ORDERED.**

25 Dated: May 22, 2014

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28 HOWARD R. LLOYD
UNITED STATES MAGISTRATE JUDGE

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