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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

LARRY McIVER,  
  
vs.  
  
PACIFIC CARMEL MOUNTAIN  
HOLDINGS, LP, *et al.*  
  
Defendants.

CASE NO. 09CV1975-LAB (AJB)  
**ORDER GRANTING LEAVE TO  
AMEND COMPLAINT; AND  
ORDER VACATING HEARING**

On March 2, Plaintiff moved for leave to amend his complaint to include elements required by *Chapman v. Pier 1 Imports (U.S.), Inc.*, 631 F.3d 939 (9th Cir. 2011). This motion was set for hearing on Monday, April 25, 2011. Under Civil Local rule 7.1(e)(2), the oppositions of the two remaining Defendants, Sears, Roebuck & Co., and Costco Wholesale Corporation, were therefore due no later than Monday, April 11, 2011.

On March 29, Sears filed a notice of non-opposition. Costco filed no opposition or notice of non-opposition, though a joint motion to which it was a signatory suggested that amendment was expected. (Joint Mot. to Continue Pretrial Deadlines, Docket no. 87, at 2:22–26.) Under Civil Local Rule 7.1(e)(3)(c), failure to file an opposition as required under Rule 7.1(e)(2) may constitute consent to the granting of the motion. The Court so construes

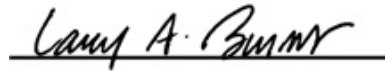
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1 Costco's failure to oppose the motion, which is therefore **GRANTED**. No later than April 22,  
2 2011, Plaintiff shall file his amended complaint.

3 The hearing on calendar for Monday, April 25 is **VACATED**.

4 **IT IS SO ORDERED.**

5 DATED: April 18, 2011

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7 **HONORABLE LARRY ALAN BURNS**  
8 United States District Judge

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