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

LORI CABRAL,

Plaintiff,

v.

ANTICA TRATTORIA, INC., a
California Corporation,

Defendant.

Case No.: 18cv573-MMA (NLS)

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

[Doc. No. 13]

On March 20, 2018, Plaintiff Lori Cabral (“Plaintiff”) commenced the instant action against Defendant Antica Trattoria, Inc. (“Defendant”) alleging violations of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12101 *et seq.*, and California’s Unruh Civil Rights Act, California Civil Code §§ 51 *et seq.* *See* Complaint. On August 31, 2018, Plaintiff filed a motion requesting leave to file a First Amended Complaint. *See* Doc. No. 13. To date, Defendant has not filed an opposition to Plaintiff’s motion. Plaintiff filed a reply brief on October 9, 2018. *See* Doc. No. 15. The Court found the matter suitable for determination on the papers and without oral argument pursuant to Civil Local Rule 7.1.d.1. *See* Doc. No. 16. For the reasons set forth below, the Court **GRANTS** Plaintiff’s unopposed motion for leave to file a First Amended Complaint.

1 **LEGAL STANDARD**

2 Federal Rule of Civil Procedure 15 governs amendment of pleadings. It states that
3 if a responsive pleading has already been filed, the party seeking amendment “may
4 amend the party’s pleading only by leave of court or by written consent of the adverse
5 party; and leave shall be freely given when justice so requires.” Fed. R. Civ. P. 15(a).
6 This rule reflects an underlying policy that disputes should be determined on their merits,
7 and not on the technicalities of pleading rules. *See Foman v. Davis*, 371 U.S. 178, 181-
8 82 (1962). Accordingly, the Court must be generous in granting leave to amend. *See*
9 *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990) (noting
10 leave to amend should be granted with “extreme liberality”); *Ascon Props., Inc. v. Mobil*
11 *Oil Co.*, 866 F.2d 1149, 1160 (9th Cir. 1989).

12 However, courts may deny leave to amend for several reasons, including the
13 presence of bad faith on the part of the plaintiff, undue delay, prejudice to the defendant,
14 futility of amendment, and whether the plaintiff has previously filed an amended
15 complaint. *See Ascon Props.*, 866 F.2d at 1160; *McGlinchy v. Shell Chem. Co.*, 845 F.2d
16 802, 809 (9th Cir. 1988). The test of futility “is identical to the one used when
17 considering the sufficiency of a pleading challenged under Rule 12(b)(6).” *Miller v.*
18 *Rykoff-Sexton, Inc.*, 845 F.2d 209, 214 (9th Cir. 1988).

19 **DISCUSSION**

20 Plaintiff seeks to amend her Complaint by “correct[ing] factual allegations in the
21 complaint” and “identify[ing] the additional [architectural] barriers discovered through a
22 site inspection.” Doc. No. 13-1 at 8. Plaintiff requests the Court grant her leave to
23 amend because there is no undue delay, bad faith, futility, dilatory motives, previous
24 amendments to the Complaint, or prejudice to Defendant. *See id.* at 7.

25 Here, the Court finds that Plaintiff’s proposed amendment is not futile, and there is
26 no evidence that the proposed amendment will prejudice Defendant. Additionally,
27 Plaintiff filed her motion by the deadline set forth in the Court’s scheduling order (*see*
28 Doc. No. 33), and it does not appear that Plaintiff delayed in filing the instant motion.

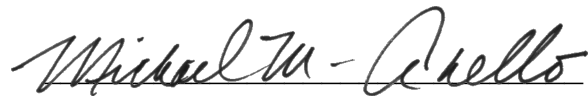
1 Further, Plaintiff has not previously amended her Complaint. Therefore, upon thorough
2 review of the relevant documents, and after examining the relevant factors, the Court
3 finds that permitting Plaintiff leave to amend her Complaint to correct factual allegations
4 and identify newly discovered architectural barriers is appropriate.

5 **CONCLUSION**

6 Accordingly, the Court **GRANTS** Plaintiff's unopposed motion for leave to file a
7 First Amended Complaint. Plaintiff must file her First Amended Complaint on or before
8 **October 12, 2018.**

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10 **IT IS SO ORDERED.**

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12 Dated: October 10, 2018

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14 HON. MICHAEL M. ANELLO
15 United States District Judge
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