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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Oscar Vargas,

10 Plaintiff,

11 v.

12 Snowflake Unified School District No. 5, et  
13 al.,

14 Defendants.

No. CV-17-08035-PCT-JAT

**ORDER**

15 Pending before the Court is Plaintiff's second motion to amend the complaint. In  
16 this motion, Plaintiff seeks to make one change; specifically to name Defendant Hollis  
17 Merrill to Count 4 (Count 4 is Plaintiff's Section 1983 claim). (Doc. 27-1 at 7). Plaintiff  
18 claims that his failure to include Defendant Merrill in Count 4 of the first amended  
19 complaint was a scrivener's error and that Plaintiff always intended to include Defendant  
20 Merrill in Count 4.

21 Defendants oppose amendment arguing that Plaintiff has admitted in some context  
22 that he did not intend to pursue his Section 1983 claim against Defendant Merrill;  
23 therefore, Plaintiff should not be allowed to amend inconsistent with this prior  
24 representation. (Doc. 29 at 2-3). Plaintiff's motion makes some ambiguous statements  
25 about whether Defendants are correct about counsels' prior conversations; but ultimately  
26 Plaintiff states that his counsel has no recollection of any phone call or correspondence  
27 that would be a stipulation that Defendant Merrill should not be included in Count 4.  
28 (Doc. 27 at 3). Defendants offer no written stipulation signed by Plaintiff's counsel that

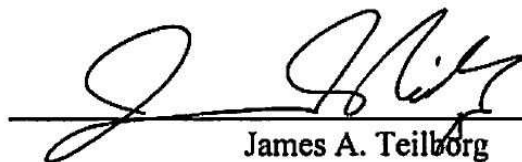
1 would contradict Plaintiff's counsel's statements.

2 Further, considering the factors for leave to amend, (1) bad faith, (2) undue delay,  
3 (3) prejudice to the opposing party, (4) futility of amendment; and (5) whether plaintiff  
4 has previously amended his complaint, only one factor weighs against amendment. *See*  
5 *Allen v. City of Beverly Hills*, 911 F.2d 367, 373 (9th Cir. 1990). Specifically, Plaintiff  
6 has previously been given leave to amend; thus, that factor weighs against amendment.  
7 However, as to the other factors, if Plaintiff's counsel is taken at his word, there is no bad  
8 faith. Additionally, the motion for leave to amend was filed within 7 days of the Rule 16  
9 conference, well before any discovery or motions deadlines expired; therefore, there is no  
10 undue delay or prejudice. Thus, the Court does not find bad faith, undue delay, prejudice,  
11 or futility (Defendants do not argue that the amendment would be futile).

12 Based on the foregoing,

13 **IT IS ORDERED** that Plaintiff's motion for leave to amend (Doc. 27) is granted.  
14 Because Plaintiff failed to lodge his proposed amended complaint, Plaintiff is further  
15 ordered to FILE the second amended complaint no later than September 1, 2017. If  
16 Plaintiff fails to file the second amended complaint by September 1, 2017, this Order  
17 permitting leave to amend will be deemed to be vacated and the case will proceed on the  
18 first amended complaint. Defendants shall answer or otherwise respond to the to-be-filed  
19 second amended complaint within the time set by the rules.

20 Dated this 28th day of August, 2017.

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25 James A. Teilborg  
26 Senior United States District Judge  
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