3 4 5 6 7 UNITED STATES DISTRICT COURT 8 9 EASTERN DISTRICT OF CALIFORNIA 10 11 LARRY DONNELL KING, SR., Case No.: 1:15-cv-00414-LJO-SAB (PC) 12 Plaintiff, ORDER GRANTING PLAINTIFF'S MOTION TO AMEND THE COMPLAINT, DIRECTING CLERK 13 v. OF COURT TO FILE SECOND AMENDED COMPLAINT, AND GRANTING DEFENDANTS 14 M.D. BITER, et al., THIRTY DAYS TO FILE A RESPONSE 15 Defendants. [ECF Nos. 43, 45, 47] 16 Plaintiff Larry Donnell King, Sr. is appearing pro se and in forma pauperis in this civil rights 17 18 action pursuant to 42 U.S.C. § 1983. Currently before the Court is Plaintiff's motion to amend the complaint, filed June 5, 2017. 19 20 On July 5, 2017, Defendants filed a statement of non-opposition and request for thirty days to respond 21 to the second amended complaint, and Plaintiff filed a reply on July 14, 2017. 22 Plaintiff seeks to amend the complaint to clarify the date of the first incident as October 18, 23 2011, and not August 10, 2011. Defendants do not oppose Plaintiff's request to amend the complaint 24 and request thirty days to file a response thereto. Plaintiff argues that Defendants do not need 25 additional time to respond to the amended complaint. 26 Under Rule 15(a) of the Federal Rules of Civil Procedure, a party may amend the party's 27 pleading once as a matter of course twenty-one days after serving, or if a response was filed, within

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twenty-one days after service of the response. Fed. R. Civ. P. 15(a)(1). Otherwise, a party may

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amend only by leave of the court or by written consent of the adverse party, and leave shall be freely given when justice so requires. Fed. R. Civ. P. 15(a).

Rule 15(a) is very liberal and leave to amend 'shall be freely given when justice so requires." AmerisourceBergen Corp. v. Dialysis West, Inc., 465 F.3d 946, 951 (9th Cir. 2006) (quoting Fed. R. Civ. P. 15(a)). However, courts "need not grant leave to amend where the amendment: (1) prejudices the opposing party; (2) is sought in bad faith; (3) produces an undue delay in the litigation; or (4) is futile." AmerisourceBergen Corp., 465 F.3d at 951. Relevant to the futility factor, a plaintiff may not bring unrelated claims against unrelated parties in a single action. Fed. R. Civ. P. 18(a), 20(a)(2); Owens v. Hinsley, 635 F.3d 950, 952 (7th Cir. 2011); George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007). The burden to demonstrate prejudice falls upon the party opposing the amendment. DCD Programs, Ltd. v. Leighton, 833 F.2d 183, 187 (9th Cir. 1987). Absent prejudice, or a strong showing of any of the remaining three factors, a presumptions exists under Rule 15(a) in favor of granting leave to amend. Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003).

As previously stated, Plaintiff seeks to amend the complaint seeks to amend the complaint to clarify the date of the first incident as October 18, 2011, and not August 10, 2011. Defendants have submitted a statement of non-opposition. Allowing parties to amend based on information obtained through discovery is common and well established. Fru-Con Constr. Corp. v. Sacramento Mun. Util. Dist., No. CIV. S-05-583 LKK/GGH, 2006 WL 3733815, *15-16 (E.D. Cal. Dec. 15, 2006). In this instance, the Court finds that granting Plaintiff's motion to amend would not prejudice Defendants, it was not brought in bad faith nor does it produce undue delay in the litigation as the motion was filed prior to deadline set forth in the Court's March 8, 2017, scheduling order, and amendment is not futile. Accordingly, Plaintiff's motion to amend will be granted, and in the interest of justice Defendants are granted thirty days to file a response.

Based on the foregoing, it is HEREBY ORDERED that:

- 1. Plaintiff's motion to amend is granted;
- 2. The Clerk of Court is directed to file Plaintiff's second amended complaint, lodged on June 12, 2017 (Doc. No. 43); and

1	3. Defendants are granted thirty days to file a response to Plaintiff's second amended	
2	complaint.	
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4	IT IS SO ORDERED.	SIZ
5	Dated: July 21, 2017	July N. Lave
6		UNITED STATES MAGISTRATE JUDGE
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