



1 superior court on January 11, 2017. (ECF No. 8-1 at 3.) Defendant filed an answer on January  
2 31, 2017, and subsequently removed the action to this Court on February 1, 2017. (ECF No. 8-1  
3 at 3.) Defendant predicated removal on federal question jurisdiction. (ECF No. 1.) Plaintiff now  
4 seeks to amend his complaint to remove the only federal claim, brought under 42 U.S.C. § 1983.  
5 (ECF No. 8-1 at 6.)

6 Motions to amend are governed by Rule 15(a) of the Federal Rules of Civil Procedure. A  
7 party may amend their pleading once as a matter of course within twenty-one days of service, or,  
8 if the pleading is one which a responsive pleading is required, twenty-one days after service of a  
9 responsive pleading or twenty-one days after service of a motion under 12(b), (e), or (f),  
10 whichever is earlier. Fed. R. Civ. P. 15(a)(1). After that period, the decision to grant or deny  
11 leave to amend lies within the discretion of the court or the opposing party. *See Swanson v.*  
12 *United States Forest Serv.*, 87 F.3d 339, 343 (9th Cir. 1996). However, Rule 15(a) provides the  
13 Court “should freely give leave [to amend] when justice so requires.” Fed. R. Civ. P. 15(a)(2). In  
14 the Ninth Circuit, Rule 15(a) is applied with “extreme liberality.” *Eminence Capital, LLC. v.*  
15 *Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003).

16 The Court considers five factors when assessing the propriety of a motion for leave to  
17 amend: (1) bad faith, (2) undue delay, (3) prejudice to the opposing party, (4) futility of  
18 amendment, and (5) whether the plaintiffs have previously amended their complaint. *Allen v.*  
19 *City of Beverly Hills*, 911 F.2d 367, 373 (9th Cir. 1990). Prejudice to the opposing party carries  
20 the greatest weight. *Eminence Capital, LLC.*, 316 F.3d at 1052.

21 Plaintiff’s motion is not in bad faith because eliminating federal claims after removal is  
22 viewed as a legitimate tactical decision. *See Singh v. New Century Mortgage Corp.*, No. S-10-  
23 0836 JAM GGH PS, 2012 WL 260461, at \*2 (E.D. Cal. Jan. 27, 2012). Plaintiff filed the instant  
24 motion fifteen days after the action was removed to federal court and therefore Plaintiff did not  
25 unreasonably delay in filing his motion. Furthermore, if any prejudice to Defendant exists, it has  
26 no bearing as Defendant consents to the amendment. Accordingly, the Court finds good cause  
27 exists to warrant Plaintiff amending his complaint.

28 By amending the complaint to remove the federal claim, Plaintiff has eliminated the basis

1 for this Court's federal jurisdiction. Plaintiff moves to remand this action after amending the  
2 complaint and Defendant does not oppose Plaintiff's motion. The Court sees no reason to deny  
3 this unopposed motion.

4 For the reasons set forth above, Plaintiff is GRANTED leave to amend his complaint and  
5 shall file his amended complaint within ten (10) days of the issuance of this order. Upon filing of  
6 the amended complaint, this action is hereby REMANDED to the Superior Court of California,  
7 County of San Joaquin. Defendant's request that Plaintiff pay its filing fee of \$400 is DENIED.

8 IT IS SO ORDERED.

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10 Dated: August 29, 2017

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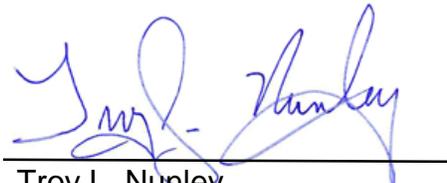
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Troy L. Nunley  
United States District Judge