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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 ANDREW CEJAS,

12 Plaintiff,

13 v.

14 DANIEL PARAMO, et al.,

15 Defendants.
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Case No.: 14-CV-1923-WQH-WVG

**REPORT AND
RECOMMENDATION GRANTING
PLAINTIFF'S UNOPPOSED
MOTION TO AMEND**

[ECF NO. 53]

17 Presently before the Court is Plaintiff Andrew Cejas's unopposed Motion for Leave
18 to Amend his Complaint. (ECF No. 53.) For the reasons that follow, the Court
19 **RECOMMENDS** Plaintiff's unopposed Motion be **GRANTED**.
20

I. BACKGROUND

21 Plaintiff filed a Complaint pursuant to 42 U.S.C. § 1983 on August 15, 2014. (ECF
22 No. 1.) On October 4, 2016, Defendants D. Jaime, D. Paramo, S. Rutledge, and D.
23 Strayhorn moved to dismiss Plaintiff's claims against Paramo and Jaime. (ECF No. 17.)
24 On September 1, 2017, the Court granted Defendants' motion to dismiss claims against
25 Paramo and Jaime. (ECF No. 42.) Defendants filed an Answer to Plaintiff's remaining
26 claims on November 8, 2017. (ECF No. 43.)

27 On March 9, 2018, Plaintiff moved for leave to file an amended complaint. (ECF
28

1 No. 53.) Defendants did not file a response in opposition to the motion.

2 **II. LEGAL STANDARD**

3 Pursuant to Federal Rule of Civil Procedure (“Rule”) 15(a), leave to amend a
4 complaint after a responsive pleading has been filed may be allowed by leave of court. Fed.
5 R. Civ. P. 15(a)(2). Such amendments “shall be freely given when justice so requires.”
6 *Foman v. Davis*, 371 U.S. 178, 182 (1962). “This policy is to be applied with extreme
7 liberality.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003).
8 “Since Rule 15 favors a liberal policy towards amendment, the nonmoving party bears the
9 burden of demonstrating why leave to amend should not be granted.” *Genentech, Inc. v.*
10 *Abbot Laboratories*, 127 F.R.D. 529, 530-31 (N.D. Cal. 1989) (citing *Senza-Gel Corp. v.*
11 *Seiffhart*, 803 F.2d 661, 666 (9th Cir. 1986) (“the nonmovent bears the burden of showing
12 why amendment should not be granted”).

13 When determining whether to grant leave to amend, courts weigh certain factors:
14 “undue delay, bad faith or dilatory motive on the part of [the party who wishes to amend a
15 pleading], repeated failure to cure deficiencies by amendments previously allowed, undue
16 prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of
17 amendment [.]” *Foman*, 371 U.S. at 182. “Not all of the factors merit equal weight.”
18 *Eminence Capital, LLC*, 316 F.3d at 1052. For example, “delay alone cannot justify denial
19 of leave to amend.” *Genentech, Inc.*, 127 F.R.D. at 530 (N.D. Cal. 1989) (citing *DCD*
20 *Programs v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987); *see also Kendrick v. County of*
21 *San Diego*, Case No. 15-CV-2615-GPC(RBB), 2017 WL 2692903, at *5 (S.D. Cal 2017).

22 **III. ANALYSIS**

23 Here, Plaintiff waited over three and a half years between the filing of his Complaint
24 and his request to file an amended complaint. Plaintiff has offered no reasoning for such a
25 delay other than claiming he has been on lock down “for months.” (ECF No. 53.) To call
26 this undue delay would be an understatement. However, “delay alone cannot justify denial
27 of leave to amend.” *Genentech, Inc.*, 127 F.R.D. at 530 (N.D. Cal. 1989).

28 When examining the remaining *Foman* factors, the Court finds that leave to amend

1 is appropriate. This is Plaintiff's first request to amend, thus he has not failed to cure
2 deficiencies in previous amendments. Additionally, Defendants have failed to show,
3 through their lack of an opposition, that Plaintiff is moving to amend in bad faith or that
4 Defendants will suffer undue prejudice by allowing the amendment.

5 Accordingly, the Court **RECOMMENDS** the Motion be **GRANTED** and Plaintiff
6 be allowed leave to file an amended complaint.

7 **IV. CONCLUSION**

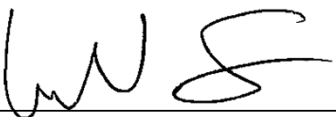
8 For the reasons set forth above, it is **RECOMMENDED** that Plaintiff's Motion to
9 file an amended complaint be **GRANTED**. This Report and Recommendation will be
10 submitted to the United States District Judge assigned to this case, pursuant to the
11 provisions of 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

12 **IT IS ORDERED** that no later than **April 18, 2018**, any party to this action may
13 file written objections with the Court and serve a copy on all parties. The document shall
14 be captioned "Objection to Report and Recommendation."

15 **IT IS FURTHER ORDERED** that any reply to the objections shall be filed with
16 the Court and served on all parties no later than **May 2, 2018**. The parties are advised that
17 failure to file objections within the specified time may waive the right to raise those
18 objections on appeal. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

19 **IT IS SO ORDERED.**

20 Dated: April 4, 2018

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23 Hon. William V. Gallo
24 United States Magistrate Judge
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