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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 Raul Arellano,

11 Plaintiff,

12 v.

13 Milton, et al.,

14 Defendants.

Case No.: 15-cv-2069-JAH-AGS

**REPORT AND RECOMMENDATION  
ON PLAINTIFF’S MOTION TO  
NAME DEFENDANT DOE #2  
(ECF No. 38)**

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16 Pro se plaintiff Raul Arellano seeks to amend his first amended complaint to identify  
17 defendant DOE #2 as “T. Paule.” (ECF No. 38.) This motion is unopposed, and the Court  
18 recommends granting it.

19 After amending the complaint once, a plaintiff may only obtain leave to amend again  
20 with the opposing party’s written consent or leave of court. Fed. R. Civ. P. 15(a)(2). But  
21 the court “should freely give leave [to amend] when justice so requires.” *Id.* In making this  
22 determination, the Court must consider any reasons that weigh against further amendment,  
23 including “undue delay, bad faith or dilatory motive on the part of the movant, repeated  
24 failure to cure deficiencies by amendments previously allowed, undue prejudice to the  
25 opposing party by virtue of allowance of the amendment, [and] futility of amendment.”  
26 *Foman v. Davis*, 371 U.S. 178, 182 (1962). The most important of these so-called *Foman*  
27 factors is undue prejudice, which is the “touchstone of the inquiry under rule 15(a).”  
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1 *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (citations  
2 omitted).

3 The defense filed no opposition and thus identified no prejudice or other ills that  
4 may arise from such a limited amendment. And it appears that Arellano acted diligently to  
5 identify this defendant. After discovering the name in a medical file disclosed in another  
6 case, he promptly filed the current motion. (ECF No. 38, at 1; ECF No. 44, at 2.)

7 Thus, this Court recommends that Arellano’s motion to change the name of  
8 defendant DOE #2 to “T. Paule” be **GRANTED**.

9 Upon being served with a copy of this report, the parties have 14 days to file any  
10 objections. Upon being served with any objections, the party receiving such objections has  
11 14 days to file any response. *See* Fed. R. Civ. P. 72(b)(2). If the District Judge grants  
12 Arellano’s motion to amend, Arellano must file his second amended complaint re-naming  
13 DOE #2 as “T. Paule” within 14 days of the District Judge’s order on the matter. Arellano  
14 may not otherwise amend his complaint, except as authorized by the Court.

15 Dated: July 8, 2017

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18 Hon. Andrew G. Schopler  
19 United States Magistrate Judge  
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