

1  
2  
3  
4  
5  
6  
7 **UNITED STATES DISTRICT COURT**  
8 **EASTERN DISTRICT OF CALIFORNIA**  
9

10 QUINCY SIMS, Case No. 1:12-cv-01904-LJO-SKO (PC)  
11 Plaintiff, ORDER DENYING PLAINTIFF'S MOTION  
12 v. FOR LEAVE TO FILE SECOND AMENDED  
13 M. CABRERA, COMPLAINT ON GROUNDS OF UNDUE  
14 Defendant. FUTILITY  
15 /  
16

17 **I. Background**

18 Plaintiff Quincy Sims (“Plaintiff”), a state prisoner proceeding pro se and in forma  
19 pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on November 21, 2012. This  
20 action for damages is proceeding against Defendant M. Cabrera (“Defendant”) for failing to  
21 protect Plaintiff from the threat of harm by gang members or affiliates while he was at Kern  
22 Valley State Prison, in violation of the Eighth Amendment of the United States Constitution.

23 Pursuant to the scheduling order filed on May 13, 2014, the deadline to amend the  
24 pleadings was November 13, 2014; and on July 17, 2014, Plaintiff filed a timely motion seeking  
25 leave to file a second amended complaint adding facts regarding exhaustion and specifying the  
26 punitive damages amount sought.<sup>1</sup> Fed. R. Civ. P. 15(a)(2). (Docs. 22, 33.) Defendant filed an  
27

28 

---

<sup>1</sup> The Court’s review is limited to Plaintiff’s very brief motion because he did not include a proposed second amended  
complaint.

1 opposition on August 1, 2014, and the motion was submitted on the record without oral argument  
2 pursuant to Local Rule 230(l). (Doc. 36.)

3 **II. Discussion**

4 **A. Legal Standard**

5 “Rule 15(a) is very liberal and leave to amend ‘shall be freely given when justice so  
6 requires.’” *AmerisourceBergen Corp. v. Dialysis West, Inc.*, 465 F.3d 946, 951 (9th Cir. 2006)  
7 (quoting Fed. R. Civ. P. 15(a)); *accord Sonoma Cnty. Ass’n of Retired Emps. v. Sonoma Cnty.*,  
8 708 F.3d 1109, 1117 (9th Cir. 2013). However, courts “need not grant leave to amend where the  
9 amendment: (1) prejudices the opposing party; (2) is sought in bad faith; (3) produces an undue  
10 delay in the litigation; or (4) is futile.” *AmerisourceBergen Corp.*, 465 F.3d at 951; *accord*  
11 *Sonoma Cnty. Ass’n of Retired Emps.*, 708 F.3d at 1117. While ““prejudice to the opposing party  
12 carries the greatest weight,”” *Sonoma Cnty. Ass’n of Retired Emps.*, 708 F.3d at 1117 (quoting  
13 *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (per curiam)), leave  
14 to amend “is properly denied . . . if amendment would be futile,” *Carrico v. City and Cnty. of San  
15 Francisco*, 656 F.3d 1002, 1008 (9th Cir. 2011) (citing *Gordon v. City of Oakland*, 627 F.3d 1092,  
16 1094 (9th Cir. 2010)); *accord Woods v. City of San Diego*, 678 F.3d 1075, 1082 (9th Cir. 2012);  
17 *Silva v. Di Vittorio*, 658 F.3d 1090, 1105-06 (9th Cir. 2011). Further, “[a] party cannot amend  
18 pleadings to ‘directly contradict an earlier assertion made in the same proceeding.’” *Air  
19 Aromatics, LLC v. Opinion Victoria’s Secret Stores Brand Mgmt., Inc.*, 744 F.3d 595, 600 (9th  
20 Cir. 2014) (quoting *Russell v. Rolfs*, 893 F.2d 1033, 1037 (9th Cir. 1990)).

21 **B. Findings**

22 Plaintiff seeks leave to amend to add facts regarding exhaustion, in response to  
23 Defendant’s earlier-filed motion for judgment on the pleadings for failure to exhaust, and to  
24 specify he is seeking punitive damages in the amount of \$60,000.00. For the reasons which  
25 follow, the Court finds that although the proposed amendments do not prejudice Defendant and  
26 are not sought in bad faith, they will produce undue delay and are futile.<sup>2</sup> Given the finding on the

27  
28 <sup>2</sup> All four factors are discussed with respect to the proposed amendment to add facts regarding exhaustion. The proposed amendment to add the punitive damages amount is not discussed in the context of prejudice or bad faith because the record is devoid of any indication that amendment would be prejudicial or is sought in bad faith.

1 futility factor, justice does not require Plaintiff be granted leave to file a second amended  
2 complaint. *Carrico*, 656 F.3d at 1008; *Woods*, 678 F.3d at 1082; *Silva*, 658 F.3d at 1105-06.

3       1.     Prejudice

4       Although Defendant argues that amendment to add facts regarding exhaustion would be  
5 highly prejudicial, the Court finds there is no discernible prejudice. *See Cafasso, U.S. ex rel. v.*  
6 *General Dynamics C4 Systems, Inc.*, 637 F.3d 1047, 1058-59 (9th Cir. 2011) (prejudice would  
7 result from unfairly burdening defendant with “onerous” 733-page pleading ); *AmerisourceBergen*  
8 *Corp.*, 465 F.3d at 951-54 (prejudice existed where potentially high, additional litigation costs  
9 would result from delayed amendment); *Morongo Band of Mission Indians v. Rose*, 893 F.2d  
10 1074, 1079 (9th Cir. 1990) (prejudice existed where “radical shift in direction” posed by new  
11 claims would have required the defendants to undertake, at a late hour, an entirely new course of  
12 defense); *Acri v. Int'l Ass'n of Machinists & Aerospace Workers*, 781 F.2d 1393, 1398-99 (9th  
13 Cir. 1986) (prejudice where amendment would necessitate further discovery); *M/V Am. Queen v.*  
14 *San Diego Marine Constr. Corp.*, 708 F.2d 1483, 1491 (9th Cir. 1983) (prejudice where  
15 amendment would totally alter basis for action and summary judgment motion was pending).  
16 Defendant argues that amendment would allow Plaintiff to thwart his rightful entitlement to  
17 judgment on the pleadings, but his motion was brought early in the proceedings; the Court rejected  
18 his argument that Plaintiff’s non-exhaustion was established on the face of the amended  
19 complaint; and even if had found the argument meritorious, leave to amend must be granted unless  
20 it is clear the complaint cannot be saved by amendment. *Jackson v. Barnes*, 749 F.3d 755, 766-67  
21 (9th Cir. 2014) (district court erred in granting judgment on the pleadings and not permitting  
22 amendment where it was not absolutely clear the deficiencies were not curable), *petition for cert.*  
23 *filed*, \_\_ S.Ct. \_\_, \_\_ (U.S. Nov. 11, 2014) (14-542); *Harris v. Cnty. of Orange*, 682 F.3d 1126,  
24 1131 (9th Cir. 2012) (district court erred in granting motion for judgment on the pleadings without  
25 giving leave to amend); *Cafasso*, 637 F.3d at 1058 (district court invited amendment rather than  
26 opposition to motion for judgment on the pleadings brought after nearly two years of discovery).  
27 Thus, given the procedural posture of this case and the nature and limitation of relief available  
28 under Rule 12(c), Plaintiff’s proposed amendment would not cause prejudice to Defendant.

## 2. Bad Faith

2 Next, a motion to amend brought to avoid the possibility of an adverse ruling may support  
3 a finding of bad faith. *Acri*, 781 F.2d at 1398-99. However, the inquiry is fact-specific and in this  
4 case, the stated ground for amendment must be viewed in the context of Plaintiff's status as a  
5 prisoner proceeding pro se and the procedural posture of this case. Defendant filed a motion for  
6 judgment on the pleadings for failure to exhaust shortly after he waived service and answered the  
7 amended complaint, and his argument was premised on Plaintiff's purported concession to non-  
8 exhaustion in the amended complaint. However, Plaintiff disputed that he failed to exhaust, and  
9 given Defendant's view that Plaintiff conceded non-exhaustion, he now seeks to clarify via the  
10 addition of facts. While such clarification is unnecessary, as discussed below, the Court is not  
11 persuaded that Plaintiff seeks to amend in bad faith. *See id.* at 1398-99 (finding of bad faith where  
12 motion to amend intentionally brought late to avoid adverse summary judgment ruling). Although  
13 Plaintiff may not amend to contradict the allegation in his amended complaint regarding  
14 exhaustion, *Air Aromatics, LLC*, 744 F.3d at 600, his desire to amend to add facts regarding  
15 exhaustion does not necessarily evidence bad faith in light of his minimal legal experience and  
16 lack of expertise.

### **3. Undue Delay and Futility**

18       Turning to undue delay and futility, the Court determined that the face of Plaintiff's  
19 amended complaint does not entitle Defendant to judgment, and it recommended the motion be  
20 denied, as previously discussed. Inmates are not required to plead or demonstrate exhaustion in  
21 their complaints, and the Ninth Circuit has recognized that only in rare instances will the failure to  
22 exhaust be apparent from the face of the complaint. *Albino v. Baca*, 747 F.3d 1162, 1169 (9th Cir.  
23 2014) (en banc), *cert. denied*, 135 S.Ct. 403 (2014).

24 Here, Plaintiff is not seeking to add claims or parties, but rather to add facts regarding an  
25 issue he is not required to plead and which does not entitle Defendant to dismissal. To the extent  
26 Defendant moves for summary judgment for failure to exhaust in the future, that motion will be  
27 based on *evidence*, and Plaintiff will have the opportunity to oppose the motion and produce his  
28 own evidence in response. Plaintiff is not constrained to rely exclusively on the allegation in his

1 amended complaint, and he is free to produce additional evidence and/or explain the context of his  
2 allegation via his own declaration and/or other evidence.<sup>3</sup> Thus, justice does not require leave to  
3 amend where the proposed amendment would lead to entirely unnecessary delay and is futile in  
4 that it serves no arguable purpose.

5 The reasoning with respect to the exhaustion allegations applies equally to the proposed  
6 punitive damages amendment. The federal system is one of notice pleading, Fed. R. Civ. P.  
7 8(a)(3), and “judgment should grant the relief to which the party is entitled, even if the party has  
8 not demanded that relief in its pleadings,” Fed. R. Civ. P. 54(c). Plaintiff’s amended complaint  
9 already articulates a demand for punitive damages, and it would both cause undue delay and be  
10 pointless for him to amend to add the specific amount he seeks.

11 **III. Conclusion and Order**

12 Accordingly, the Court finds that although the proposed amendments would not prejudice  
13 Defendant and they are not sought in bad faith, justice does not require allowing Plaintiff to amend  
14 where the proposed amendments would cause undue delay and are futile in that they would add  
15 purely superfluous facts to the pleading. Plaintiff’s motion for leave to amend is therefore  
16 DENIED.

17  
18 IT IS SO ORDERED.  
19

20 Dated: December 8, 2014

21 /s/ Sheila K. Oberto  
22 UNITED STATES MAGISTRATE JUDGE  
23  
24  
25  
26  
27

---

28 <sup>3</sup> Plaintiff may not disavow the allegation in his amended complaint but neither would he be permitted to do so in a  
second amended complaint. *Air Aromatics, LLC*, 744 F.3d at 600.