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7 **UNITED STATES DISTRICT COURT**

8 EASTERN DISTRICT OF CALIFORNIA

9 RAYMOND ALFORD BRADFORD,
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11 Plaintiff,

12 v.

13 C. OGBUEHI, et al.,

14 Defendants.

Case No. 1:15-cv-01918-AWI-BAM (PC)

ORDER GRANTING PLAINTIFF'S
MOTION FOR LEAVE TO AMEND
COMPLAINT
[ECF No. 28]

ORDER DIRECTING CLERK OF COURT
TO FILE AMENDED COMPLAINT
[ECF No. 29]

FINDINGS AND RECOMMENDATIONS
REGARDING DISMISSAL OF CERTAIN
CLAIMS

FOURTEEN-DAY DEADLINE

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20 Plaintiff Raymond Alford Bradford is a state prisoner proceeding *pro se* and *in forma*
21 *pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

22 Currently before the Court is Plaintiff's motion for leave to file an amended complaint
23 and declaration in support thereof, filed on January 29, 2018. (ECF No. 28.) Plaintiff has also
24 lodged a proposed amended complaint with his motion. (ECF No. 29.)

25 **I. Motion for Leave to Amend Complaint**

26 On December 13, 2017, the Court found service of Plaintiff's complaint appropriate, and
27 ordered that this action would proceed on his claim against Defendants Nietas and Ogbuehi for
28 deliberate indifference to serious medical needs in violation of the Eighth Amendment. (ECF No.

1 20.) The Court further ordered for Plaintiff to submit documents for service of process on the
2 Defendants within thirty days. (*Id.*)

3 Plaintiff states that after receiving the Court’s December 13, 2017 order, he reviewed his
4 complaint and “was not satisfied with what he said and how he said it, due to the fact that at the
5 time of filing he was heavily medicated with psychotropic medications.” (ECF No. 28 at 2.)
6 Plaintiff further states that he would like to amend his complaint because he believes he will not
7 “win” his case without amending, and “does not stand a chance of defeating a summary
8 judgment motion based on what is stated thus far[.]” (*Id.* at 5.)¹

9 **A. Legal Standard**

10 Under Rule 15(a) of the Federal Rules of Civil Procedure, a party may amend the party’s
11 pleading once as a matter of course at any time before a responsive pleading is served.
12 Otherwise, a party may amend only by leave of the court or by written consent of the adverse
13 party. “Rule 15(a) is very liberal and leave to amend ‘shall be freely given when justice so
14 requires.’” AmerisourceBergen Corp. v. Dialysist West, Inc., 465 F.3d 946, 951 (9th Cir. 2006)
15 (quoting Fed. R. Civ. P. 15(a)). However, courts “need not grant leave to amend where the
16 amendment: (1) prejudices the opposing party; (2) is sought in bad faith; (3) produces an undue
17 delay in litigation; or (4) is futile.” *Id.*

18 **B. Discussion**

19 Considering the relevant factors here, leave to amend should be granted. Plaintiff asserts
20 that he intends to plead his original claims with further clarity, in good faith. In reviewing the
21 amended complaint’s allegations, which are discussed in more detail below, the Court finds that
22 the amendment is not futile. Plaintiff pleads different, but not inconsistent, facts as he has
23 previously alleged, asserting the same claims against the same parties as in his original
24 complaint. Further, Plaintiff has not previously amended his complaint, it has not yet been
25 served, and no responsive pleading has been filed or served.

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27 ¹ Plaintiff also states that he disagrees with the Court’s determination regarding his earlier attempt to
28 amend his complaint, which was construed as a request to file a supplemental pleading. Plaintiff filed
separate objections regarding that ruling, (ECF No. 27), which the Court will address in a separate order.

1 For these reasons, leave to amend will be granted, and the Clerk of the Court will be
2 directed to file Plaintiff’s amended complaint on the docket. The Court next turns to screening
3 Plaintiff’s amended complaint.

4 **II. Screening Requirement and Standard**

5 The Court is required to screen complaints brought by prisoners seeking relief against a
6 governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C. §
7 1915A(a). Plaintiff’s complaint, or any portion thereof, is subject to dismissal if it is frivolous or
8 malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary
9 relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

10 A complaint must contain “a short and plain statement of the claim showing that the
11 pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
12 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
13 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937,
14 1949 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65
15 (2007)). While a plaintiff’s allegations are taken as true, courts “are not required to indulge
16 unwarranted inferences.” *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009)
17 (internal quotation marks and citation omitted).

18 To survive screening, Plaintiff’s claims must be facially plausible, which requires
19 sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable
20 for the misconduct alleged. *Iqbal*, 556 U.S. at 678, 129 S.Ct. at 1949 (quotation marks omitted);
21 *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a
22 defendant acted unlawfully is not sufficient, and mere consistency with liability falls short of
23 satisfying the plausibility standard. *Iqbal*, 556 U.S. at 678, 129 S.Ct. at 1949 (quotation marks
24 omitted); *Moss*, 572 F.3d at 969.

25 **A. Allegations in Complaint**

26 Plaintiff is currently housed at R.J. Donovan Correctional Facility. The events giving rise
27 to this action are alleged to have occurred while Plaintiff was housed at Kern Valley State Prison
28 (“KVSP”) in Delano, California.

1 Plaintiff names the following defendants, each of whom is employed at KVSP: (1) C.
2 Ogbuehi, M.D., a physician; and (2) Registered Dietitian Nietas. Both of the defendants are sued
3 in their individual and official capacity.

4 Plaintiff alleges as follows: Defendant Ogbuehi was acting under color of state law when
5 he illegally denied/delayed Plaintiff's treatment for his bloody diarrhea, stomach cramps, and
6 weight loss, to inflict unnecessary wanton and pain upon Plaintiff, knowing that he suffers from
7 ulcerative colitis. Defendant's delay, denial, and interference caused Plaintiff's ailment to
8 deteriorate and/or worsen. Defendant used state-derived authority in acting to Plaintiff's
9 detriment.

10 Defendant Nietas was acting under color of state law when she illegally delayed, denied,
11 and interfered with Plaintiff's treatment for his weight loss, stomach cramps, bloody diarrhea,
12 pain and discomfort to inflict unnecessary pain upon Plaintiff, knowing that he suffers from
13 ulcerative colitis. Defendant's actions caused Plaintiff's illness to worsen. Moreover, Defendant
14 used state-derived authority in acting to Plaintiff's detriment.

15 From August 5, 2015 to August 29, 2017, Plaintiff complained to both Defendant
16 Ogbuehi and Nietas about his active flare-up of his ulcerative colitis, bloody diarrhea, stomach
17 cramps, and weight loss. He was repeatedly denied treatment.

18 The dietician denied, delayed, and interfered with treatment by deliberately withholding
19 treatment for Plaintiff's severe weight loss, bloody diarrhea, and stomach cramps. Defendant
20 allowed Plaintiff's illness to go untreated for several months, knowing that Plaintiff suffered
21 from colitis. She interfered with treatment by suggesting to the doctor that Plaintiff did not have
22 the condition, and therefore no treatment was necessary or needed. As a result, Defendant
23 Ogbuehi denied and delayed treatment, causing Plaintiff unnecessary harm, and his illness to
24 deteriorate. Plaintiff experienced bloody diarrhea, stomach cramps, pain, discomfort, and weight
25 loss for several months, on a daily basis. Defendant Ogbuehi would interfere with treatment by
26 suggesting to Dr. Ulit that Plaintiff should not receive the medically-indicated treatment to
27 control Plaintiff's active flare up of his ulcerative colitis, and pain and discomfort. Plaintiff's
28 inmate emergency 602 appeal was denied, and his condition would deteriorate as a result.

1 On August 5, 2015, Defendants Ogbuehi and Nietas violated Plaintiff's Eighth
2 Amendment rights. He was without treatment for several months. He lost 30 pounds, and
3 suffered pain daily, and would eventually be hospitalized. The Defendants' actions show that the
4 course of treatment they chose was medically unacceptable under the circumstances, and that
5 they chose to deny, delay, and interfere with treatment in conscious disregard of an excessive
6 risk to his health. Defendants Ogbuehi and Nietas purposefully acted and/or failed to respond to
7 his pain and medical need, and as a result, harmed Plaintiff by their indifference.

8 Plaintiff asserts a claim under the Eighth Amendment for deliberate indifference to
9 serious medical needs against Defendants. He also seeks a declaration judgment that his rights
10 were violated, compensatory and punitive damages, and a jury trial.

11 **B. Discussion**

12 **1. Official Capacity – Eleventh Amendment**

13 Plaintiff attempts to bring suit against Defendants in both their individual and official
14 capacities.

15 The Eleventh Amendment prohibits suits for monetary damages against a State, its
16 agencies, and state officials acting in their official capacities. *Aholelei v. Dep't of Pub. Safety*,
17 488 F.3d 1144, 1147 (9th Cir. 2007). A suit against a state official in his official capacity equates
18 to a suit against the state employing that official, *Hafer v. Melo*, 502 U.S. 21, 25 (1991),
19 effectively barring a plaintiff from bringing suit on these grounds. However, the Eleventh
20 Amendment does not bar a suit for monetary damages against a state official sued in his
21 individual capacity. *Id.*

22 Plaintiff's claims against Defendants in their official capacities are tantamount to
23 bringing suit against the State. As a result, Plaintiff's claims against Defendants in their official
24 capacities cannot stand and are barred by the Eleventh Amendment. However, Plaintiff is not
25 precluded from bringing a suit for monetary damages against defendants in their individual
26 capacities.

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1 **2. Eighth Amendment**

2 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an
3 inmate must show ‘deliberate indifference to serious medical needs.’” *Jett v. Penner*, 439 F.3d
4 1091, 1096 (9th Cir. 2006) (quoting *Estelle v. Gamble*, 429 U.S. 97, 104 (1976)). Plaintiff must
5 show (1) a serious medical need and (2) defendant’s response to the need was deliberately
6 indifferent. *Jett*, 439 F.3d at 1096. Deliberate indifference is shown by “a purposeful act or
7 failure to respond to a prisoner’s pain or possible medical need, and harm caused by the
8 indifference.” *Jett*, 439 F.3d at 1096 (citing *McGuckin v. Smith*, 974 F.2d 1050, 1060 (9th Cir.
9 1992).

10 At the pleading stage, Plaintiff’s complaint is sufficient to state a claim for deliberate
11 indifference to serious medical needs against Defendants Nietas and Ogbuehi. Plaintiff has
12 alleged that these defendants, despite knowing Plaintiff had ulcerative colitis and being informed
13 of his flare-ups and symptoms, denied him treatment for bloody diarrhea, stomach cramps and
14 weight loss. He further alleges that this denial caused him not only pain, but also a worsening of
15 his condition.

16 **3. Declaratory Judgment**

17 In addition to monetary damages, Plaintiff seeks a declaration that his rights were
18 violated. “A declaratory judgment, like other forms of equitable relief, should be granted only as
19 a matter of judicial discretion, exercised in the public interest.” *Eccles v. Peoples Bank of*
20 *Lakewood Village*, 333 U.S. 426, 431 (1948). “Declaratory relief should be denied when it will
21 neither serve a useful purpose in clarifying and settling the legal relations in issue nor terminate
22 the proceedings and afford relief from the uncertainty and controversy faced by the parties.”
23 *United States v. Washington*, 759 F.2d 1353, 1357 (9th Cir. 1985).

24 In the event that this action reaches trial and the jury returns a verdict in favor of Plaintiff,
25 that verdict will be a finding that Plaintiff’s constitutional rights were violated. Accordingly, a
26 declaration that any defendant violated Plaintiff’s rights is unnecessary.

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1 **III. Conclusion and Recommendations**

2 For the reasons explained above, the Court HEREBY ORDERS as follows:

3 1. Plaintiff’s motion for leave to file an amended complaint, filed on January 29,
4 2018 (ECF No. 28), is granted; and

5 2. The Clerk of the Court is directed to file Plaintiff’s amended complaint, lodged
6 on January 29, 2018 (ECF No. 29), on the docket.

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8 Further, for the reasons discussed, the Court finds that Plaintiff has stated a cognizable
9 claim against Defendants Ogbuehi and Nietas in their individual capacity for deliberate
10 indifference to his serious medical need in violation of the Eighth Amendment. Plaintiff claim
11 against these Defendants in their original capacity, and his claim for declaratory relief, should be
12 dismissed, as the defects with those claims cannot be cured by amendment. *Lopez v. Smith*, 203
13 F.3d 1122, 1130 (9th Cir. 2000) (district court should grant leave to amend unless the pleading
14 could not possibly be cured by the allegation of other facts); *Hartmann v. Cal. Dep’t of Corrs.*
15 *and Rehab.*, 707 F.3d 1114, 1130 (9th Cir. 2013) (“A district court may deny leave to amend
16 when amendment would be futile.”).

17 Accordingly, the Court HEREBY RECOMMENDS as follows:

18 1. This action should proceed on Plaintiff’s amended complaint against Defendants
19 Ogbuehi and Nietas in their individual capacity for deliberate indifference to his serious medical
20 need in violation of the Eighth Amendment; and,

21 2. Plaintiff’s claim against Defendants Ogbuehi and Nietas in their official
22 capacities, and for a declaratory judgment, should be dismissed for the failure to state a claim
23 upon which relief may be granted.

24 These findings and recommendations will be submitted to the United States District
25 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
26 **fourteen (14) days** after being served with these findings and recommendations, Plaintiff may
27 file written objections with the Court. The document should be captioned “Objections to
28 Magistrate Judge’s Findings and Recommendation.” Plaintiff is advised that failure to file

1 objections within the specified time may result in the waiver of the “right to challenge the
2 magistrate’s factual findings” on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir.
3 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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5 IT IS SO ORDERED.

6 Dated: February 9, 2018

/s/ Barbara A. McAuliffe
7 UNITED STATES MAGISTRATE JUDGE

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