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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT GLEN MISTRIEL,

Plaintiff,

v.

KERN COUNTY, et al.,

Defendants.

CASE NO. 1:03-cv-6922 AWI SKO

**ORDER GRANTING PLAINTIFF'S
REQUEST FOR EXTENSION OF TIME
TO FILE AN AMENDED COMPLAINT
*NUNC PRO TUNC***

(Doc. 44)

Plaintiff is a state prisoner proceeding pro se and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed his initial complaint on December 24, 2003. On July 1, 2004, Plaintiff filed a First Amended Complaint. (Doc. 12.) On May 23, 2005, Plaintiff filed a Second Amended Complaint. (Doc. 18.) On April 14, 2010, the Second Amended Complaint was dismissed, and Plaintiff was given thirty (30) days to amend his complaint. (Doc. 38.)

On May 12, 2010, Plaintiff requested an extension of time to file an amended complaint. (Doc. 39.) Plaintiff's request was granted, and he was given until June 18, 2010, to file an amended complaint. (Doc. 40.) On June 21, 2010, Plaintiff again filed a motion for an extension of time to file a Third Amended Complaint in accordance with the Court's April 14, 2010, order. (Doc. 42.) Plaintiff's motion was granted, and he was given until August 23, 2010, to file an amended complaint. (Doc. 43.) On August 27, 2010, Plaintiff filed a third request for a forty-five (45) day

1 extension of time to file an amended complaint. (Doc. 44.)

2 Plaintiff is cautioned that this is the final extension of time that the Court will grant. To date,
3 Plaintiff has been granted extensions of time totaling ninety (90) days beyond the thirty (30) days
4 initially granted to amend the complaint. Plaintiff shall be given an additional forty-five (45) days
5 to file an amended complaint. Plaintiff shall file a Third Amended Complaint on or before October
6 18, 2010. If Plaintiff again fails to file an amended complaint, this action will be recommended for
7 dismissal for failure to prosecute and for failure to state a claim upon which relief can be granted.

8 Plaintiff is encouraged to closely review the April 14, 2010 order that details the deficiencies
9 of the Complaint and explains what must be corrected to properly state a claim pursuant to 42 U.S.C.
10 § 1983. Plaintiff is cautioned that failure to cure the deficiencies in his Second Amended Complaint
11 as directed by the Court's April 14, 2010 order will result in a recommendation that Plaintiff's case
12 be dismissed with prejudice.

13 Accordingly, IT IS HEREBY ORDERED THAT:

- 14 1. Plaintiff's request for additional time to file an amended complaint is GRANTED
15 *nunc pro tunc*;
- 16 2. Plaintiff shall file an amended complaint on or before October 18, 2010;
- 17 3. Plaintiff may not incorporate any new, unrelated claims to this action via his
18 amended complaint; and
- 19 4. If Plaintiff fails to file an amended complaint, the Court will recommend that this
20 action be dismissed, with prejudice, for failure to state a claim and failure to
21 prosecute the case.

22
23 IT IS SO ORDERED.

24 **Dated: August 31, 2010**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE