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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 ANDREW R. LOPEZ,  
12 Plaintiff,  
13 vs.  
14 JEFFREY BEARD, et al.,  
15 Defendants.  
16

1:13-cv-01556-LJO-GSA-PC

ORDER DENYING PLAINTIFF'S REQUESTS  
TO STRIKE PORTIONS OF THE FIRST  
INFORMATIONAL ORDER, FOR AN AMPLE  
DISCOVERY PHASE, AND FOR COURT-  
APPOINTED COUNSEL  
(Doc. 8.)

17 **I. BACKGROUND**

18 Andrew R. Lopez ("Plaintiff") is a state prisoner proceeding pro se in this civil rights  
19 action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on  
20 September 26, 2013. (Doc. 1.) On September 30, 2013, the court issued the First  
21 Informational Order. (Doc. 3.)

22 On October 17, 2013, Plaintiff filed objections to the First Informational Order,  
23 requested an ample discovery phase, and requested court-appointed counsel. (Doc. 8.)

24 **II. FIRST INFORMATIONAL ORDER -- ¶¶V(E) AND VII**

25 The court's First Informational Order provides, in part:

26 **V(E).** "If a response to discovery is found to be unsatisfactory,  
27 the party seeking discovery may file a motion to compel a further  
28 response and in that case must include a copy of the discovery  
propounded and the response to it. Fed. R. Civ. P. 37. A motion

1 to compel must be accompanied by "a certification that the  
2 movant has in good faith conferred or attempted to confer with  
3 the party not making the disclosure in an effort to secure the  
4 disclosure without court action." Fed. R. Civ. P. 37(a)(1). A  
5 discovery motion that does not comply with applicable rules may  
6 be stricken and may result in imposition of sanctions." (Doc. 3 at  
7 4-5 ¶V(E)).

8 **VII.** "Absent good cause, all Court deadlines are strictly  
9 enforced. Requests for time extensions must be filed before the  
10 deadline expires and must state good reason for the request.  
11 Local Rule 144." (Id. at 5 ¶VII.)

## 12 **II. PLAINTIFF'S REQUESTS**

13 Plaintiff objects to portions of the court's First Informational Order found at ¶¶V(E) and  
14 VII and requests the court to strike those portions. Specifically, Plaintiff objects to ¶V(E)'s  
15 notice that Rule 37(a)(1) of the Federal Rules of Civil Procedure requires the parties to attempt  
16 to confer before filing a motion to compel, and the provision at ¶VII that "all Court deadlines  
17 are strictly enforced." Plaintiff also requests the court to provide ample time for discovery in  
18 this case, and to appoint counsel for Plaintiff.

### 19 **A. Request to Strike Provisions from the First Informational Order**

20 Plaintiff asserts that the requirement for the parties to attempt to confer before filing a  
21 motion to compel is "simply another absurd intent to obstruct *pro per* prisoner's access to  
22 redress upon their valid claims," because prisoners must use "snail mail" to communicate  
23 discovery issues, using up precious time allotted for discovery. Objections, Doc. 8 at 2:2-8.  
24 Plaintiff also argues that this Court routinely extends prison officials' time to respond to  
25 discovery, which reduces the *pro per* prisoner's discovery time. Plaintiff requests that the court  
26 strike the "strict enforcement of set deadlines" provision of ¶VII, and the "confer" provision of  
27 ¶V(E) from the First Informational Order. Objections at 2:17-19.

### 28 **Discussion**

As a rule, the Court issues a standard First Informational Order in prisoner civil rights  
cases such as Plaintiff's, at the commencement of the case, to inform the plaintiff of applicable  
court procedures and rules of court. The provisions in the First Informational Order are to be  
followed in all cases, barring exceptions that may arise in specific cases. Thus, absent good

1 cause, all court deadlines are strictly enforced, and the parties are expected to attempt to confer  
2 before filing a motion to compel. Plaintiff has not shown good cause for the court to strike  
3 provisions from the First Informational Order. However, if Plaintiff requires an extension of a  
4 particular court deadline during the course of this litigation, he may request an extension of  
5 time, showing good cause for the extension. Similarly, if Plaintiff is unable to comply with  
6 Rule 37(a)(1)'s requirement to attempt to confer before filing a motion to compel, he may bring  
7 a motion *at that time* to be excused from the requirement, showing good cause.

8 Based on the foregoing, Plaintiff's request for the court to strike provisions from the  
9 First Informational Order shall be denied.

10 **B. Request for Ample Time for Discovery**

11 Plaintiff requests "this court to not set (*sic*) a short discovery deadline [in this action,  
12 and] each and every time defendants are granted an extension to respond, equally extend any  
13 deadlines." Objections at 2:14-16. Plaintiff's requests are premature. In the course of this  
14 litigation, if Plaintiff should require additional time to conduct discovery, he may file a motion  
15 *at that time* to extend the discovery deadline, showing good cause for the extension. Therefore,  
16 Plaintiff's request for an ample discovery phase in this action shall be denied, without  
17 prejudice.

18 **C. Request for Appointment of Counsel**

19 Plaintiff also requests court-appointed counsel. Plaintiff does not have a constitutional  
20 right to appointed counsel in this action, Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir.  
21 1997), and the court cannot require an attorney to represent plaintiff pursuant to 28 U.S.C. §  
22 1915(e)(1). Mallard v. United States District Court for the Southern District of Iowa, 490 U.S.  
23 296, 298, 109 S.Ct. 1814, 1816 (1989). However, in certain exceptional circumstances the  
24 court may request the voluntary assistance of counsel pursuant to section 1915(e)(1). Rand,  
25 113 F.3d at 1525. Without a reasonable method of securing and compensating counsel, the  
26 court will seek volunteer counsel only in the most serious and exceptional cases. In  
27 determining whether "exceptional circumstances exist, the district court must evaluate both the  
28 likelihood of success of the merits [and] the ability of the [plaintiff] to articulate his claims *pro*

1 *se* in light of the complexity of the legal issues involved.” Id. (internal quotation marks and  
2 citations omitted).

3 In the present case, the court does not find the required exceptional circumstances. At  
4 this early stage in the proceedings, the court cannot make a determination that plaintiff is likely  
5 to succeed on the merits. Plaintiff filed the Complaint on October 10, 2013, less than three  
6 weeks ago, and the Complaint awaits the court’s screening required under 28 U.S.C. 1915.  
7 Thus, to date the court has not found any cognizable claims in Plaintiff’s Complaint for which  
8 to initiate service of process, and no other parties have yet appeared. Moreover, based on a  
9 review of the record in this case, the court does not find that Plaintiff cannot adequately  
10 articulate his claims. Therefore, Plaintiff’s request for counsel shall be denied, without  
11 prejudice to renewal of the request at a later stage of the proceedings.

12 **III. CONCLUSION**

13 Based on the foregoing, IT IS HEREBY ORDERED that:

- 14 1. Plaintiff’s request to strike portions of the First Informational Order is DENIED;
- 15 2. Plaintiff’s request for an ample discovery phase in this action is DENIED,  
16 without prejudice; and
- 17 3. Plaintiff’s request for appointment of counsel is DENIED, without prejudice.

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20 IT IS SO ORDERED.

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22 Dated: October 24, 2013

/s/ Gary S. Austin  
23 UNITED STATES MAGISTRATE JUDGE  
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