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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MATTHEW V. SALINAS,

Plaintiff,

vs.

KENNETH J. POGUE, et al.,

Defendants.

1:16-cv-00520-GSA-PC

**ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL,
GRANTING MOTION FOR EXTENSION
OF TIME, AND GRANTING REQUEST
FOR COPY OF COMPLAINT
(ECF Nos. 34, 35.)**

SIXTY-DAY DEADLINE TO EITHER:

**(1) FILE THIRD AMENDED
COMPLAINT**

OR

**(2) NOTIFY COURT OF
WILLINGNESS TO PROCEED
ONLY WITH CLAIMS FOUND
COGNIZABLE BY COURT**

**ORDER FOR CLERK TO SEND
PLAINTIFF COPY OF SECOND
AMENDED COMPLAINT AND EXHIBITS
(ECF No. 29.)**

I. BACKGROUND

Matthew V. Salinas (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis with this civil rights action pursuant to 42 U.S.C. § 1983. On April 14, 2016, Plaintiff filed the Complaint commencing this action. (ECF No. 1.)

1 On August 19, 2016, Plaintiff consented to Magistrate Judge jurisdiction in this action
2 pursuant to 28 U.S.C. § 636(c), and no other parties have made an appearance. (ECF No. 14.)
3 Therefore, pursuant to Appendix A(k)(4) of the Local Rules of the Eastern District of
4 California, the undersigned shall conduct any and all proceedings in the case until such time as
5 reassignment to a District Judge is required. Local Rule Appendix A(k)(3).

6 On November 3, 2017, Plaintiff filed a motion for appointment of counsel. (ECF No.
7 34.) On November 6, 2017, Plaintiff filed another motion for appointment of counsel, a motion
8 for an extension of time, and a request for a copy of the Second Amended Complaint. (ECF
9 No. 35.)

10 **II. MOTION FOR APPOINTMENT OF COUNSEL**

11 Plaintiff does not have a constitutional right to appointed counsel in this action, Rand v.
12 Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot require an attorney to
13 represent Plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court
14 for the Southern District of Iowa, 490 U.S. 296, 298 (1989). However, in certain exceptional
15 circumstances the court may request the voluntary assistance of counsel pursuant to section
16 1915(e)(1). Rand, 113 F.3d at 1525.

17 Without a reasonable method of securing and compensating counsel, the court will seek
18 volunteer counsel only in the most serious and exceptional cases. In determining whether
19 “exceptional circumstances exist, the district court must evaluate both the likelihood of success
20 of the merits [and] the ability of the [plaintiff] to articulate his claims *pro se* in light of the
21 complexity of the legal issues involved.” Id. (internal quotation marks and citations omitted).

22 In the present case, the court does not find the required exceptional circumstances. At
23 this juncture, Plaintiff has been granted leave to either file a Third Amended Complaint or
24 proceed with the claims found cognizable by the court in the Second Amended Complaint.
25 Therefore, there is presently no complaint on file in this case with which to proceed, and the
26 court cannot make a determination that Plaintiff is likely to succeed on the merits. Based on
27 the record in this case, Plaintiff is able to adequately articulate his claims and respond to the

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1 court's orders. Therefore, Plaintiff's motion shall be denied, without prejudice to renewal of
2 the motion at a later stage of the proceedings.

3 **III. MOTION FOR EXTENSION OF TIME**

4 Plaintiff requests an extension of time to respond to the court's September 21, 2017,
5 order, which requires him to either file a Third Amended Complaint or proceed with the claims
6 found cognizable by the court in the Second Amended Complaint. Plaintiff seeks additional
7 time because he is a county jail inmate and has limited access to legal resources via the law
8 library. Plaintiff explains that he is only permitted to request five legal resources per month.

9 Plaintiff shows good cause for a sixty-day extension of time. Should Plaintiff require
10 more time, he should file another request for extension of time before the prior deadline
11 expires.

12 **IV. REQUEST FOR COPY OF SECOND AMENDED COMPLAINT**

13 Plaintiff requests a free copy of his Second Amended Complaint. Plaintiff is advised
14 that the Clerk does not ordinarily provide free copies of case documents to parties. The Clerk
15 charges \$.50 per page for copies of documents. See 28 U.S.C. § 1914(a). Copies of up to
16 twenty pages may be made by the Clerk's Office at this court upon written request and
17 prepayment of the copy fees. The fact that the court has granted leave for Plaintiff to proceed
18 in forma pauperis does not entitle him to free copies of documents from the court.

19 Plaintiff asserts that his copy of the Second Amended Complaint was lost when he
20 accidentally left it at the "Rehab. New Life." (ECF No. 35 at 2.) Plaintiff also asserts that he is
21 indigent and cannot afford to pay the court's copy fees.

22 In this instance, the court shall make an exception and provide Plaintiff with a free copy
23 of his Second Amended Complaint. **Plaintiff is advised that in the future he should take**
24 **care to retain copies of any documents he sends to the court.**

25 **V. CONCLUSION**

26 Accordingly, IT IS HEREBY ORDERED that:

- 27 1. Plaintiff's motion for appointment of counsel is DENIED, without prejudice;
28 2. Plaintiff's motion for extension of time is GRANTED;

