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6 UNITED STATES DISTRICT COURT  
7 EASTERN DISTRICT OF CALIFORNIA  
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9 MATTHEW V. SALINAS,

10 Plaintiff,

11 vs.

12 KENNETH J. POGUE, et al.,

13 Defendants.  
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1:16-cv-00520-DAD-GSA-PC

ORDER VACATING FINDINGS AND  
RECOMMENDATIONS OF JANUARY 8,  
2018  
(ECF No. 40.)

ORDER GRANTING MOTION TO FILE  
THIRD AMENDED COMPLAINT  
(ECF No. 43.)

ORDER DEEMING THIRD AMENDED  
COMPLAINT TIMELY FILED  
(ECF No. 44.)

17 Matthew V. Salinas (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma*  
18 *pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. On April 14, 2016, Plaintiff  
19 filed the Complaint commencing this action. (ECF No. 1.) On November 17, 2016, Plaintiff  
20 filed the First Amended Complaint. (ECF No. 25.) On February 22, 2017, Plaintiff filed the  
21 Second Amended Complaint. (ECF No. 29.)

22 On September 21, 2017, the court screened Plaintiff’s Second Amended Complaint  
23 pursuant to 28 U.S.C. § 1915A and found that it states a cognizable ADA claim against  
24 defendant C/O Gomness in his official capacity, but no other claims. (ECF No. 32.) On  
25 September 1, 2017, Plaintiff was granted leave to either file a Third Amended Complaint or  
26 notify the Court that he is willing to proceed only on the claim found cognizable by the Court  
27 and related state law claims. (*Id.*) On December 20, 2017, Plaintiff filed a notice informing the  
28 Court that he is willing to proceed only on the cognizable ADA claim and related state law

1 claims against defendant C/O Gomness. (ECF No. 38.) On January 8, 2018, the court entered  
2 findings and recommendations to dismiss the remaining claims and defendants. (ECF No. 40.)

3 On January 19, 2018, Plaintiff filed a motion to file a Third Amended Complaint and  
4 submitted the Third Amended Complaint, which was filed by the Clerk. (ECF Nos. 43, 44.)  
5 Plaintiff explains that he wanted to file the Third Amended Complaint in response to the  
6 court's September 1, 2017, order, which granted him leave to file a Third Amended Complaint  
7 within thirty days. However, Plaintiff was released from prison on or about November 29,  
8 2017, and left without a copy of the Third Amended Complaint he had prepared. Plaintiff did  
9 not know how to proceed, so he filed the notice on December 20, 2017, indicating that he was  
10 willing to proceed only on the cognizable ADA claim and related state law claims against  
11 defendant C/O Gomness. Plaintiff recently obtained his copies of the Third Amended  
12 Complaint and now seeks leave to file it.

13 In light of Plaintiff's notice of his circumstances and the filing of his Third Amended  
14 Complaint on January 19, 2018, the court finds good cause to vacate the findings and  
15 recommendations, grant Plaintiff's leave to file the Third Amended Complaint, and deem the  
16 Third Amended Complaint timely filed.

17 Accordingly, IT IS HEREBY ORDERED that:

- 18 1. The findings and recommendations entered on January 8, 2018, are VACATED;
- 19 2. Plaintiff's motion to file a Third Amended Complaint, filed on January 19, 2018,  
20 is GRANTED;
- 21 3. Plaintiff's Third Amended Complaint, filed on January 19, 2018, is deemed  
22 timely filed; and
- 23 4. The court shall screen the Third Amended Complaint in due course.

24  
25 IT IS SO ORDERED.

26 Dated: January 23, 2018

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE