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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

RUBEN FLOWERS,  
Plaintiff,  
v.  
REYES, et al.,  
Defendant.

CASE NO. 1:17-cv-00263-AWI-MJS (PC)

**ORDER DISCHARGING ORDER TO  
SHOW CAUSE**

**ORDER GRANTING EXTENSION OF  
TIME**

**ORDER REQUIRING PLAINTIFF TO  
NOTIFY COURT OF HIS INTENT TO  
PROSECUTE ACTION**

(ECF NO. 16)

TWENTY-ONE (21) DAY DEADLINE TO  
RESPOND TO ORDER

THIRTY (30) DAY DEADLINE TO AMEND  
COMPLAINT

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 42 U.S.C. § 1983. On May 17, 2017, the Court dismissed Plaintiff's first amended complaint for failure to state a claim but gave thirty days leave to amend. (ECF No. 13.) On July 12, 2017, Plaintiff filed a motion to extend time to file a second amended complaint. (ECF No. 14.) That motion was granted on

1 July 13, 2017. On October 24, 2017, the Court ordered Plaintiff to show cause why the  
2 action should not be dismissed for Plaintiff's failure to file an amended complaint as  
3 ordered by the Court. (ECF No. 16.) In response Plaintiff filed a request to dismiss the  
4 action without prejudice and with leave to amend within 120 days. (ECF No. 17.)

5 From this submission the Court cannot discern whether Plaintiff does, in fact, wish  
6 to dismiss this action. If Plaintiff intended his notice to serve as a voluntary dismissal the  
7 case would be automatically terminated by operation of law, Fed. R. Civ. P.  
8 41(a)(1)(A)(i), and Plaintiff would have to file an entirely new case. However, Plaintiff  
9 must clarify his intent with regard to his request to dismiss *with leave to amend*.

10 If Plaintiff no longer wishes to pursue his claims in this case, he may dismiss the  
11 action by filing a notice of voluntary dismissal pursuant to Federal Rule of Civil  
12 Procedure 41(a)(1)(A)(i). If Plaintiff instead wishes to proceed, the Court will require him  
13 to file an affirmative statement setting forth his intent to prosecute this action within  
14 twenty-one (21) days of service of the order. Failure to respond with either a notice of  
15 voluntary dismissal or a statement of intent to proceed will result in dismissal of the  
16 action, with prejudice, for failure to obey a court order and failure to prosecute.

17 Assuming that Plaintiff intends to proceed with the action, the Court also  
18 construes this filing as a request to extend the deadline for filing his amended complaint.  
19 Plaintiff has failed to present good cause for a 120-day extension of time, particularly in  
20 light of previous extensions granted by the court. However, the Court finds good cause  
21 for a thirty (30) day extension of time.

22 Based on the foregoing, it is HEREBY ORDERED that:

- 23 1. The order to show cause (ECF No. 16) is DISCHARGED;
- 24 2. Plaintiff is ordered to respond to this order within twenty-one (21) days,  
25 clarifying his intent to prosecute this action;
- 26 3. Plaintiff is granted thirty (30) days from the date of service of this order in  
27 which to file an amended complaint.

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4. If Plaintiff fails to comply with this order, the Court will recommend the action be dismissed.

IT IS SO ORDERED.

Dated: November 7, 2017

/s/ Michael J. Seng  
UNITED STATES MAGISTRATE JUDGE