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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANDREW MADRID,

Plaintiff,

No. 2:11-cv-1607 WBS KJN P

vs.

TIM VIRGA,

Defendant.

ORDER

_____/

Plaintiff is a state prisoner proceeding without counsel. On July 26, 2011, plaintiff filed a first amended complaint that was entered on the docket on July 27, 2011. However, on July 27, 2011, the undersigned issued an order screening plaintiff's original complaint. Thus, plaintiff's amended complaint was filed without benefit of the court's July 27, 2011 screening order. The court has reviewed plaintiff's amended complaint and finds that it suffers from many of the same defects addressed in this court's July 27, 2011 order. Accordingly, plaintiff's July 26, 2011 amended complaint is dismissed with leave to amend. Plaintiff shall file a second amended complaint that complies with this court's July 27, 2011 order.

Plaintiff has also requested the appointment of counsel. The United States Supreme Court has ruled that district courts lack authority to require counsel to represent

1 indigent prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298
2 (1989). In certain exceptional circumstances, the court may request the voluntary assistance of
3 counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir.
4 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). In the present case, the
5 court does not find the required exceptional circumstances. Therefore, plaintiff's motion for the
6 appointment of counsel is denied.

7 Accordingly, IT IS HEREBY ORDERED that:

8 1. Plaintiff's July 26, 2011 first amended complaint (dkt. no. 18) is dismissed
9 with leave to amend.

10 2. Within thirty days from the date of this order, plaintiff shall submit the
11 previously provided Notice of Amendment and submit the following documents to the court:


12 a. The completed Notice of Amendment; and

13 b. An original and one copy of the Second Amended Complaint.

14 Plaintiff's second amended complaint shall comply with the requirements of the Civil Rights
15 Act, the Federal Rules of Civil Procedure, and the Local Rules of Practice. The second amended
16 complaint must also bear the docket number assigned to this case and must be labeled, "Second
17 Amended Complaint." Failure to file a second amended complaint in accordance with this order
18 and the July 27, 2011 order, may result in the dismissal of this action.

19 3. Plaintiff's July 26, 2011 motion for the appointment of counsel is denied.

20 DATED: July 28, 2011

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23 KENDALL J. NEWMAN
24 UNITED STATES MAGISTRATE JUDGE

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