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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DENNIS GARDNER,  
Plaintiff,  
v.  
SIX FLAGS DISCOVERY KINGDOM, et  
al.,  
Defendants.

No. 2:15-cv-2085-WBS-EFB P

ORDER

Plaintiff is a county inmate proceeding without counsel in an action brought under 42 U.S.C. § 1983. Pending before the court are two requests for extensions of time, an amended complaint, and a motion for appointment of counsel.

Plaintiff’s June 7, 2017 request for an extension of time to file an amended complaint (ECF No. 11) is granted and plaintiff’s June 12, 2017 amended complaint (ECF No. 14) is deemed timely filed.<sup>1</sup> However, plaintiff’s filing of a request for an extension of time to file a second amended complaint suggests that he does not wish to proceed on the amended complaint. ECF No. 13. Accordingly, the court will dismiss the amended complaint and grant plaintiff’s request for another opportunity to amend.

<sup>1</sup> In light of this filing, the May 3, 2017 findings and recommendations (ECF No. 6) recommending this action be dismissed for failure to prosecute will be vacated.

1 As to plaintiff's request for appointment of counsel, district courts lack authority to  
2 require counsel to represent indigent prisoners in section 1983 cases. *Mallard v. United States*  
3 *Dist. Court*, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may request an  
4 attorney to voluntarily to represent such a plaintiff. See 28 U.S.C. § 1915(e)(1); *Terrell v.*  
5 *Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991); *Wood v. Housewright*, 900 F.2d 1332, 1335-36 (9th  
6 Cir. 1990). When determining whether "exceptional circumstances" exist, the court must  
7 consider the likelihood of success on the merits as well as the ability of the plaintiff to articulate  
8 his claims pro se in light of the complexity of the legal issues involved. *Palmer v. Valdez*, 560  
9 F.3d 965, 970 (9th Cir. 2009). Having considered those factors, the court finds there are no  
10 exceptional circumstances in this case and the motion is denied.

11 Accordingly, it is hereby ORDERED that:

- 12 1. The May 3, 2017 findings and recommendations (ECF No. 6) are vacated;
- 13 2. Plaintiff's June 7, 2017 motion for an extension of time to file an amended complaint  
14 (ECF No. 11) is granted;
- 15 3. Plaintiff's June 12, 2017 amended complaint (ECF No. 14) is deemed timely filed, but  
16 dismissed in light of plaintiff's request for another opportunity to amend;
- 17 4. Plaintiff's June 12, 2017 motion for an extension of time to file a second amended  
18 complaint (ECF No. 13) is granted;
- 19 5. Plaintiff shall file a second amended complaint within 90 days from the date of this  
20 order. Failure to so comply will result in another recommendation of dismissal for  
21 failure to prosecute. The court is not inclined to grant additional requests for  
22 extensions of time; and
- 23 6. Plaintiff's motion for appointment of counsel (ECF No. 10) is denied without  
24 prejudice.

25 Dated: July 5, 2017.

26   
27 EDMUND F. BRENNAN  
28 UNITED STATES MAGISTRATE JUDGE