

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES DAVID LOGAN, II,

Plaintiff,

v.

D.L. GAMBOA, et al.,

Defendants.

No. 2:16-cv-2020 AC P

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. He has consented to the jurisdiction of the undersigned magistrate judge for all purposes pursuant to 28 U.S.C. § 636(c) and Local Rule 305(a). ECF No. 5.

By order filed March 31, 2017, plaintiff’s complaint was dismissed and he was given thirty days to file an amended complaint. ECF No. 31. Thirty days have now passed and plaintiff has not filed an amended complaint, though he has filed a motion to proceed in forma pauperis and a motion for appointment of counsel. ECF Nos. 34, 38.


Plaintiff shall be given an additional thirty days to file an amended complaint and is warned that failure to file an amended complaint will result in dismissal of this action without further warning. Additionally, as explained in the court’s March 31, 2017 order, plaintiff is a three-strikes litigant and his motion to proceed in forma pauperis will not be granted unless he shows that he meets the imminent danger exception. ECF No. 31. Finally, the motion for

1 appointment of counsel will be denied because the court is unable to determine plaintiff's
2 likelihood of success on the merits without a complaint. Terrell v. Brewer, 935 F.2d 1015, 1017
3 (9th Cir. 1991) (district court can request voluntary assistance of counsel when there are
4 exceptional circumstances); Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009) (“When
5 determining whether ‘exceptional circumstances’ exist, a court must consider ‘the likelihood of
6 success on the merits as well as the ability of the [plaintiff] to articulate his claims *pro se* in light
7 of the complexity of the legal issues involved.’” (quoting Weygandt v. Look, 718 F.2d 952, 954
8 (9th Cir. 1983))).

9 Accordingly, IT IS HEREBY ORDERED that:

- 10 1. Plaintiff has thirty days from the service of this order to file an amended complaint.
11 Failure to file an amended complaint will result in dismissal of this action without further
12 warning.
- 13 2. Plaintiff's motion for appointment of counsel (ECF No. 38) is denied.

14 DATED: May 23, 2017

15 
16 ALLISON CLAIRE
17 UNITED STATES MAGISTRATE JUDGE
18
19
20
21
22
23
24
25
26
27
28