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

RONALD E. WALTON,

Plaintiff,

No. CIV S-09-0479 EFB P

vs.

J. BUTLER, et al.,

Defendants.

ORDER

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Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. On June 24, 2010, the court denied plaintiff’s request for an extension of time, which the court construed as a request to modify the scheduling order. Dckt. No. 19. Plaintiff moves for reconsideration of that order. Dckt. No. 20. Plaintiff also requests that the court appoint counsel. Dckt. No. 21.

Although motions to reconsider are directed to the sound discretion of the court, *Frito-Lay of Puerto Rico, Inc. v. Canas*, 92 F.R.D. 384, 390 (D.C. Puerto Rico 1981), considerations of judicial economy weigh heavily in the process. Thus, Local Rule 230(j) requires that a party seeking reconsideration of a district court’s order must brief the “new or different facts or circumstances . . . [which] were not shown upon such prior motion, or what other grounds exist for the motion.” The rule derives from the “law of the case” doctrine which provides that the decisions on legal issues made in a case “should be followed unless there is

1 substantially different evidence . . . new controlling authority, or the prior decision was clearly  
2 erroneous and would result in injustice.” *Handi Investment Co. v. Mobil Oil Corp.*, 653 F.2d  
3 391, 392 (9th Cir. 1981); *see also Waggoner v. Dallaire*, 767 F.2d 589, 593 (9th Cir. 1985), *cert.*  
4 *denied*, 475 U.S. 1064 (1986).

5           Requests to modify a deadline established by the scheduling order are governed by Rule  
6 16 of the Federal Rules of Civil Procedure. A schedule may be modified upon a showing of  
7 good cause. Fed. R. Civ. P. 16(b). Good cause exists when the moving party demonstrates he  
8 cannot meet the deadline despite exercising due diligence. *Johnson v. Mammoth Recreations,*  
9 *Inc.*, 975 F.2d 604, 609 (9th Cir. 1992).

10           In his motion for reconsideration, plaintiff contends that he could not meet the June 7,  
11 2010 deadline for serving discovery requests, as established by the May 6, 2010 discovery and  
12 scheduling order because, through no fault of his own, his access to the law library has been  
13 severely limited and he was temporarily not in possession of his legal materials. In light of  
14 plaintiff’s representations, the court grants plaintiff’s request for reconsideration and issues an  
15 amended discovery and scheduling order.

16           Plaintiff also requests counsel. District courts lack authority to require counsel to  
17 represent indigent prisoners in section 1983 cases. *Mallard v. United States Dist. Court*, 490  
18 U.S. 296, 298 (1989). In exceptional circumstances, the court may request counsel voluntarily to  
19 represent such a plaintiff. 28 U.S.C. § 1915(e)(1); *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th  
20 Cir. 1991); *Wood v. Housewright*, 900 F.2d 1332, 1335-36 (9th Cir. 1990). The court finds that  
21 there are no exceptional circumstances in this case.

22           Accordingly, IT IS HEREBY ORDERED that:

- 23           1. Plaintiff’s July 26, 2010 request for appointment of counsel is denied;  
24           2. Plaintiff’s July 26, 2010 motion for reconsideration is granted;

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1 3. The May 6, 2010 discovery and scheduling order is amended as follows:

- 2 a. The parties may conduct discovery until November 15, 2010. Any  
3 motions necessary to compel discovery shall be filed by that date. All  
4 requests for discovery pursuant to Fed. R. Civ. P. 31, 33, 34, or 36 shall be  
5 served not later than September 13, 2010.
- 6 b. Motions to amend the complaint shall be filed no later than November 15,  
7 2010.
- 8 c. Dispositive motions shall be filed on or before January 17, 2011. Motions  
9 shall be briefed in accordance with paragraph 7 of the order filed February  
10 22, 2010.

11 DATED: August 5, 2010.

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13 EDMUND F. BRENNAN  
14 UNITED STATES MAGISTRATE JUDGE  
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