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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
10

11 HOWARD YOUNG,  
12 CDCR #F-44590,

13 Plaintiff,

14 vs.

15 LARRY SMALLS, et al.  
16

17 Defendants.  
18

Civil No. 09-2545 DMS (JMA)

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR EXTENSION  
OF TIME TO AMEND AND  
DIRECTING CLERK TO  
PROVIDE PLAINTIFF  
WITH COPY OF  
FIRST AMENDED  
COMPLAINT**

[Doc. No. 15]

19 **I.**

20 **PROCEDURAL HISTORY**

21 Howard Young ("Plaintiff"), a prisoner currently incarcerated at Calipatria State Prison  
22 in Calipatria, California, and proceeding pro se, initiated this civil action pursuant to 42 U.S.C.  
23 § 1983 on November 11, 1009.

24 On January 19, 2010, the Court granted Plaintiff leave to proceed *in form pauperis* but  
25 dismissed his Complaint sua sponte for failing to state a claim pursuant to 28 U.S.C.  
26 §§ 1915(e)(2) and 1915A. *See* Jan. 19, 2010 Order [Doc. No. 11] at 11. In its Order, the Court  
27 identified Plaintiff's pleading deficiencies and provided him leave to amend. *Id.* at 5-12.

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1 On the same day, however, Plaintiff filed a First Amended Complaint, as was his right  
2 pursuant to FED.R.CIV.P. 15(a) [Doc. No. 12]. Realizing that Plaintiff did not have the benefit  
3 of the Court's January 19, 2010 Order at the time he drafted his First Amended Complaint, on  
4 January 27, 2010, the Court issued an Order providing Plaintiff with the opportunity to either:  
5 (1) file a Second Amended Complaint which addressed the pleading deficiencies identified in  
6 the Court's January 19, 2010 Order; or (2) notify the Court that he indeed wished to proceed  
7 with the First Amended Complaint filed on January 19, 2010. *See* Jan, 27, 20210 Order [Doc.  
8 No. 13] at 2.

9 On February 16, 2010, Plaintiff filed a "Motion for Return of Record of all Previously  
10 Filed Documents and Extension of Time to File Amended Complaint" [Doc. No. 15], in which  
11 he asks the Court to provide him with copies of the First Amended Complaint he submitted on  
12 January 19, 2010, and thirty additional days which to prepare and submit a Second Amended  
13 Complaint.<sup>1</sup>

## 14 II.

### 15 STANDARD OF REVIEW

16 This is Plaintiff's first request for an extension of time, he is proceeding without counsel  
17 and his request is timely. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir.  
18 1990) (court has a "duty to ensure that pro se litigants do not lose their right to a hearing on the  
19 merits of their claim due to ... technical procedural requirements."). Thus, the Court finds good  
20 cause to grant Plaintiff's request. "'Strict time limits ... ought not to be insisted upon' where  
21 restraints resulting from a pro se ... plaintiff's incarceration prevent timely compliance with court  
22 deadlines." *Eldridge v. Block*, 832 F.2d 1132, 1136 (9th Cir. 1987) (citing *Tarantino v. Eggers*,  
23 380 F.2d 465, 468 (9th Cir. 1967); *see also Bennett v. King*, 205 F.3d 1188, 1189 (9th Cir. 2000)

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26 <sup>1</sup> The Court has already provided Plaintiff with a copy of his original Complaint [Doc. Nos. 9-  
27 10]. Plaintiff is hereby cautioned that the Court cannot return original documents to him once they are  
28 filed as part of the Court's record and that he is not entitled to have the Court provide photocopies for  
him free of charge. *See Sands v. Lewis*, 886 F.2d 1166, 1169 (9th Cir. 1990) (per curiam) (prisoners  
have no constitutional right to free photocopy services). If Plaintiff wishes to retain copies of the  
original documents he submits to the Court for filing in this matter, he must hereafter make his own  
copies before he mails the original documents to the Court.

1 (reversing district court's dismissal of prisoner's amended pro se complaint as untimely where  
2 mere 30-day delay was result of prison-wide lockdown).

3 **III.**

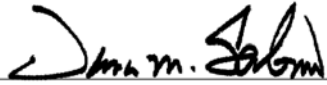
4 **CONCLUSION AND ORDER**

5 Accordingly, the Court hereby **GRANTS** Plaintiff's Motion to Extend Time to file his  
6 Second Amended Complaint [Doc. No. 15].

7 **IT IS FURTHER ORDERED** that the Clerk of Court shall provide Plaintiff with both  
8 another copy of the Court's January 19, 2010 Order [Doc. No. 11] as well as a copy of Plaintiff  
9 First Amended Complaint [Doc. No. 12]. Plaintiff's Second Amended Complaint must be  
10 received by the Court no later than **Monday, March 29, 2010**. Moreover, Plaintiff is cautioned  
11 that his Second Amended Complaint must address the deficiencies of pleading identified in the  
12 Court's January 19, 2010 Order, and must be complete in itself without reference to either his  
13 original or First Amended Complaint. *See* S.D. CAL. CIVLR 15.1; *Hal Roach Studios, Inc. v.*  
14 *Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989).

15 If Plaintiff chooses *not* to file a Second Amended Complaint by March 29, 2010, the  
16 Court will enter an Order dismissing the entire action for failing to state a claim pursuant to 28  
17 U.S.C. § 1915(e)(2) and § 1915A(b).

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19 DATED: February 26, 2010

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22 HON. DANA M. SABRAW  
23 United States District Judge  
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