

1  
2  
3  
4  
5  
6  
7  
8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
10

11 CARL LIVINGSTON ROUSE,  
12 CDCR #AA-5835,

13 Plaintiff,

14 vs.

15 ANTHONY CAMPAGNA, et al.  
16

17 Defendants.  
18

Civil No. 10-1304 WQH (BGS)

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR EXTENSION  
OF TIME TO FILE AMENDED  
COMPLAINT AND DENYING  
MOTION FOR  
RECONSIDERATION**

**[Doc. No. 10]**

19 **I.**

20 **PROCEDURAL HISTORY**

21 On June 18, 2010, Carl Livingston Rouse ("Plaintiff"), a prisoner currently incarcerated  
22 at High Desert State Prison located in Susanville, California, and proceeding pro se, initiated this  
23 civil action pursuant to 42 U.S.C. § 1983.

24 On August 6, 2010, the Court granted Plaintiff's Motion to Proceed *In Forma*  
25 *Pauperis* ("IFP") and dismissed Plaintiff's Complaint for failing to state a claim as well as  
26 seeking monetary damages against immune defendants pursuant to 28 U.S.C. §§ 1915(e)(2) and  
27 1915A(b). *See* Aug. 6, 2010 Order at 4-5. Plaintiff was granted leave to file a First Amended  
28 Complaint in order to correct multiple deficiencies of pleading identified by the Court. *Id.*

1 Plaintiff was further reminded that his Amended Complaint would supersede the original, and  
2 that any claim asserted against any Defendant not re-named in his Amended Complaint would  
3 be considered waived. *Id.* at 5 (citing *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987)).

4 On August 20, 2010, Plaintiff filed a Motion for Extension of Time to File his First  
5 Amended Complaint and a Motion to Appoint Counsel. The Court granted Plaintiff's Motion  
6 for Extension of Time but denied Plaintiff's Motion to Appoint Counsel. *See* Aug. 30, 2010  
7 Order at 3. On October 15, 2010, Plaintiff filed his First Amended Complaint. However, the  
8 Court, once again, found that Plaintiff failed to state a claim upon which relief could be granted  
9 and sought monetary damages against immune defendants pursuant to 28 U.S.C.  
10 §§ 1915(e)(2)(B) & 1915A(b). *See* Nov. 19, 2010 Order at 5. Plaintiff was granted leave to file  
11 a Second Amended Complaint. *Id.*

12 On December 17, 2010, Plaintiff filed a "Motion for 30 day Continuance and Motion to  
13 Appoint Counsel" [Doc. No. 10]. In this Motion, Plaintiff seeks an extension of time to file his  
14 Second Amended Complaint and reconsideration of the Court's previous Order denying  
15 Plaintiff's Motion for Appointment of Counsel.

## 16 II.

### 17 MOTION FOR EXTENSION OF TIME

18 This is Plaintiff's second request for an extension of time, but he is still proceeding  
19 without counsel and his request is timely. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696,  
20 699 (9th Cir. 1990) (court has a "duty to ensure that pro se litigants do not lose their right to a  
21 hearing on the merits of their claim due to ... technical procedural requirements."). Thus, the  
22 Court finds good cause to grant Plaintiff's request. "Strict time limits ... ought not to be insisted  
23 upon where restraints resulting from a pro se ... plaintiff's incarceration prevent timely  
24 compliance with court deadlines." *Eldridge v. Block*, 832 F.2d 1132, 1136 (9th Cir. 1987)  
25 (quotation omitted); *see also Bennett v. King*, 205 F.3d 1188, 1189 (9th Cir. 2000) (reversing  
26 district court's dismissal of prisoner's amended pro se complaint as untimely where 30-day delay  
27 was result of prison-wide lockdown).

28 ///

1 Accordingly, the Court **GRANTS** Plaintiff's Motion for Extension of Time to file his  
2 Second Amended Complaint.

### 3 **III.**

#### 4 **MOTION FOR RECONSIDERATION**

##### 5 **A. Standard of Review**

6 The Federal Rules of Civil Procedure do not expressly provide for motions for  
7 reconsideration.<sup>1</sup> However, a motion for reconsideration may be construed as a motion to alter  
8 or amend judgment under Rule 59(e) or Rule 60(b). *See Osterneck v. Ernst & Whinney*, 489  
9 U.S. 169, 174 (1989); *In re Arrowhead Estates Development Co.*, 42 F.3d 1306, 1311 (9th Cir.  
10 1994). Under Rule 60, a motion for "relief from a final judgment, order or proceeding" may be  
11 filed within a "reasonable time," but usually must be filed "no more than a year after the entry  
12 of the judgment or order or the date of the proceeding." FED.R.CIV.P. 60(c). Reconsideration  
13 under Rule 60 may be granted in the case of: (1) mistake, inadvertence, surprise or excusable  
14 neglect; (2) newly discovered evidence; or (3) fraud; or if (4) the judgment is void; (5) the  
15 judgment has been satisfied; or (6) for any other reason justifying relief. FED.R.CIV. P. 60(b).

##### 16 **B. Discussion**

17 Plaintiff seeks reconsideration of the Court's previous Order in which the Court denied  
18 his request for appointment of counsel. In his Motion, Plaintiff indicates that he "feel[s] that the  
19 Court is only telling me why my complaint can't make it past the initial screening and it would  
20 be very economical and just of the court to grant counsel in the matter to either assist my claims  
21 or inform me that I have no claim." *See* Pl.'s Mot. at 2.

22 The standard for appointing counsel in a civil matter is high. As the Court previously  
23 informed Plaintiff, the Constitution provides no right to appointment of counsel in a civil case,  
24 however, unless an indigent litigant may lose his physical liberty if he loses the litigation.

---

25  
26 <sup>1</sup> However, Local Rule 7.1(i) does permit motions for reconsideration. Under Local Rule  
27 7.1(i)(1), a party may apply for reconsideration "[w]henever any motion or any application or petition  
28 for any order or other relief has been made to any judge and has been refused in whole or in part...." S.D.  
CAL. CIVLR 7.1(i). The party seeking reconsideration must show "what new or different facts and  
circumstances are claimed to exist which did not exist, or were not shown, upon such prior application."  
*Id.* Local Rule 7.1(i)(2), however, only permits motions for reconsideration within "twenty -eight (28)  
days after the entry of the ruling, order or judgment sought to be reconsidered."

1 *Lassiter v. Dept. of Social Services*, 452 U.S. 18, 25 (1981). Nonetheless, under 28 U.S.C.  
2 § 1915(e)(1), district courts are granted discretion to appoint counsel for indigent persons. This  
3 discretion may be exercised only under “exceptional circumstances.” *Terrell v. Brewer*, 935  
4 F.2d 1015, 1017 (9th Cir. 1991). “A finding of exceptional circumstances requires an evaluation  
5 of both the ‘likelihood of success on the merits and the ability of the plaintiff to articulate his  
6 claims pro se in light of the complexity of the legal issues involved.’ Neither of these issues is  
7 dispositive and both must be viewed together before reaching a decision.” *Id.* (quoting *Wilborn*  
8 *v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)).

9 The Court has already informed Plaintiff on two occasions of the deficiencies of pleading  
10 and his request for counsel who might advise him that he has no cognizable claim is not  
11 sufficient to find “exceptional circumstances” to appoint counsel in this matter.

12 Accordingly, the Court finds that Plaintiff has provided no newly discovered evidence,  
13 has failed to show clear error or that the Court rendered a manifestly unjust decision, and has  
14 further failed to identify any intervening changes in controlling law that would demand  
15 reconsideration of the Court’s August 30, 2010 Order.

### 16 **III.**

#### 17 **CONCLUSION AND ORDER**

18 Accordingly, the Court hereby:

19 (1) **GRANTS** Plaintiff’s Motion for Extension of Time to file his Second Amended  
20 Complaint [Doc. No. 10]. Plaintiff’s Second Amended Complaint must be received by the Court  
21 no later than **Monday, February 21, 2011** Moreover, Plaintiff is again cautioned that his  
22 Amended Complaint must address all the deficiencies of pleading identified in the Court’s  
23 previous Orders, and must be complete in itself without reference to his original Complaint. *See*  
24 S.D. CAL. CIVLR 15.1; *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542,  
25 1546 (9th Cir. 1989).

26 (2) If Plaintiff chooses *not* to file a Second Amended Complaint by February 21, 2011,  
27 this action will remain dismissed without prejudice for failing to state a claim pursuant to 28  
28 U.S.C. § 1915(e)(2) and § 1915A(b).


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

**IT IS FURTHER ORDERED that:**

(3) Plaintiff's Motion for Reconsideration of the Court's Order denying Plaintiff's Motion for Appointment of Counsel is **DENIED**.

**IT IS SO ORDERED.**

DATED: January 7, 2011

  
**WILLIAM Q. HAYES**  
United States District Judge