

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
EASTERN DISTRICT OF CALIFORNIA

PERRY WASHINGTON, et al,

 Plaintiffs,

 v.

FRESNO COUNTY SHERIFF, et al.,

 Defendants.

Case No. 1:14-cv-00129-AWI-SAB

ORDER RE NOTICE OF SUBMISSION OF
DOCUMENTS

(ECF No. 63)

On September 24, 2014, District Judge Anthony W. Ishii issued an order finding that Plaintiff stated a claim against an identified defendant for a 2014 incident in which he alleges an unknown sheriff deputy was deliberately indifferent to his requests to be moved due to threats from other inmates and for the claim, arising from the same incident, where the unknown deputy allowed the attack by inmates as retaliation for Plaintiff's request for a grievance form, and all other claims and defendants were dismissed from this action. (ECF No. 43.) Plaintiff was ordered to either inform the Court that he was willing to proceed on the claims found cognizable or to file an amended complaint. On December 22, 2014, Plaintiff filed a notice stating that he wanted to proceed on the claims found to be cognizable in the first amended complaint. (ECF No. 50.) An order issued on December 23, 2014, providing Plaintiff with thirty days in which to provide information on the unidentified defendant for the Court to order the initiation of service of process. (ECF No. 51.)

1 After receiving an extension of time, Plaintiff filed two documents that included the name of fourteen
2 individuals. (ECF Nos. 54, 55.)

3 An order issued advising Plaintiff that the Court has previously stricken unresponsive
4 documents in this action partially for Plaintiff including new allegations unrelated to the claims
5 proceeding in this action. (ECF No. 49.) Plaintiff was again informed that this action is
6 proceeding only against the unidentified officer involved in the 2014 incident identified in the
7 September 24, 2014 order, and that he had been ordered to provide the Court with identification
8 identifying this officer. Therefore, the documents filed on January 20, 2015 were stricken as
9 being nonresponsive.

10 Plaintiff was provided with one final opportunity to comply with the December 23, 2014
11 order. The Court specifically informed Plaintiff that it cannot be any clearer that it has been.
12 The only issues that are being litigated in this action are for the 2014 incident in which he alleges
13 an unknown sheriff deputy was deliberately indifferent to his requests to be moved due to threats
14 from other inmates and for the claim, arising from the same incident, where the unknown deputy
15 allowed the attack by inmates as retaliation for Plaintiff's request for a grievance form. Plaintiff was
16 ordered to provide the Court only with information regarding this officer and any other
17 information contained in a response would be deemed unresponsive and this action would be
18 dismissed. (ECF No. 51 at 2.)

19 On February 9, 2015, Plaintiff refiled the notice containing the names and addresses of the
20 fourteen officers and a request for documents. (ECF Nos. 58, 59.) On February 11, 2015, as the
21 Court was preparing a recommendation that this action be dismissed for disobedience of the Court's
22 order, Plaintiff filed a request for an extension of time, apologized for filing the incorrect notice, and
23 provided the name of the unidentified officer. (ECF No. 60.) On February 18, 2015, an order issued
24 amending the first amended complaint to correct the name of the unidentified officer and ordering
25 Plaintiff to submit service documents for Officer Velos. (ECF No. 62.) Plaintiff was ordered to
26 submit one summons for Defendant Velos, one USM-285 form, and two copies of the complaint.
27 (Id. at 2.)

28 Despite the order to submit a single subpoena, on March 5, 2015, Plaintiff submitted two

1 completed summons, one for Officer Velos and one for County Counsel. (ECF No. 63.) Given the
2 history of non-compliance with the Court's orders, the Court finds that Plaintiff has demonstrated
3 either a disregard for the orders of this Court or an inability to comply with the Courts orders. As it
4 appears clear to the Court that much of this non-compliance with Court orders is due to the assistance
5 Plaintiff is receiving from his family in prosecuting this action, the Court shall order the unapproved
6 subpoena to be disregarded and direct service of process. Further, the Court finds that Plaintiff's
7 disregard of the Court order by providing a second subpoena for county counsel, when he had been
8 ordered to submit one subpoena for Officer Velos, does not justify the issuance of sanctions at this
9 time. However, Plaintiff is advised that any further disobedience of orders issued in this action will
10 result in the recommendation of immediate dismissal of this action.

11 Accordingly, IT IS HEREBY ORDERED that:

- 12 1. The service documents for Fresno County Counsel are hereby DISREGARDED;
- 13 2. The Office of the Clerk shall forward the service documents for Officer Velos to the
14 United States Marshal for service of process; and
- 15 3. Plaintiff is advised that any further disobedience of a court order will immediately
16 result in the recommendation that this action be dismissed.

17 IT IS SO ORDERED.

18 Dated: March 12, 2015

19 
20 _____
21 UNITED STATES MAGISTRATE JUDGE