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5 **UNITED STATES DISTRICT COURT**

6 EASTERN DISTRICT OF CALIFORNIA

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9 TONY PHELPS, Sr.) Case No. 1:14-cv-251-AWI-BAM
10 Plaintiffs,)
11 v.) ORDER (1) DISMISSING CERTAIN
12 MARGARET MIMMS, JERRY DYER,) COMPLAINT APPROPRIATE; AND (3)
13 Defendant.) REQUIRING PLAINTIFF TO IDENTIFY
14) DOE DEFENDANTS WITHIN NINETY
15) DAYS
) (ECF No. 18 and 19)
)
) NINETY-DAY (90) DEADLINE
)

16 Plaintiff Tony Phelps, Sr. (“Plaintiff”) is proceeding pro se and in forma pauperis in this
17 civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed his consent to Magistrate Judge
18 Jurisdiction on March 5, 2014. (Doc. 4.) On September 4, 2014, the Court screened Plaintiff’s
19 Second Amended Complaint and found Plaintiff’s complaint states a cognizable claim against
20 Defendants John Doe SG-One and John Doe SG-Two for violation of the Fourth Amendment for
21 keeping the spit mask on Plaintiff for the duration of his detainment, but found that the complaint
22 failed to state any other cognizable claim.

23 The Court ordered Plaintiff to either file an amended complaint or notify the Court of his
24 willingness to proceed only on the claim found to be cognizable. On October 1, 2011, Plaintiff
25 filed a notice stating that he does not wish to amend and he is willing to proceed only on his
26 cognizable claim. Therefore, this case will proceed on the cognizable claim and all other claims
27 will be dismissed.
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1 In its screening order, the Court informed Plaintiff that the inclusion of Doe defendants
2 under these circumstances is permissible, as plaintiff may amend the complaint pursuant to Rule
3 15 of the Federal Rules of Civil Procedure once the identity of defendants is known through
4 discovery or other means. *Merritt v. Los Angeles*, 875 F.2d 765, 768 (9th Cir. 1989); *see Swartz*
5 *v. Gold Dust Casino, Inc.*, 91 F.R.D. 543, 547 (D. Nev. 1981). The Court also notified Plaintiff
6 that United States Marshal cannot initiate service on unknown defendants. Therefore, the Court
7 will send Plaintiff appropriate service documents at such time as Plaintiff ascertains the identities
8 of John Doe SG-One and John Doe SG-Two.

9 Plaintiff requests a 90-day continuance to identify the Doe defendants. (Doc. 19.) Based
10 on good cause shown, Plaintiff's request for a 90-day continuance for Plaintiff to identify the
11 Doe defendants is GRANTED. The Court will issue the appropriate forms for service of process
12 only after Plaintiff has provided sufficient identifying information to permit service.

13 **ORDER**

14 Accordingly, based on Plaintiff's notice, it is HEREBY ORDERED that:

- 15 1. This action for damages shall proceed against Defendants John Doe SG-One and
16 John Doe SG-Two for violation of the Fourth Amendment for keeping the spit mask on Plaintiff
17 for the duration of his detainment;
- 18 2. All other claims in the Second Amended Complaint are dismissed, with prejudice,
19 for failure to state a claim;
- 20 3. Within 90 days from the date of service of this Order, Plaintiff shall provide the
21 names and sufficient information as to the location of John Doe SG-One and John Doe SG-Two
22 to permit the Marshal to initiate service of process. 28 U.S.C. § 1915(d); Fed. R. Civ. P. 4(c)(3).
23 Plaintiff will then be provided with two summonses and two USM-285 forms for completion
24 and return. Upon receipt of the forms and copies of the second amended complaint, the Court
25 will direct the United States Marshal to initiate service of process on the identified defendants.

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