

1 have jurisdiction to dismiss the Defendants in its May 28, 2015 order. Therefore, on November 30,
2 2017, the Magistrate Judge issued Findings and Recommendations recommending that this action
3 proceed against Defendants Johnson, LeFlore and Hebron for retaliation and against Defendants
4 Johnson and LeFlore for cruel and unusual punishment. It was further recommended that Defendants
5 Allison and Does 1 through 10 be dismissed for failure to state a cognizable claim for relief. The
6 Findings and Recommendations were served on the parties and contained notice that objections were
7 to be filed within fourteen days. Plaintiff filed objections on December 28, 2017.

8 In his objections, Plaintiff contends that this action should proceed on his claims against Does
9 1 through 10, as well as the other named Defendants. Upon review of the operative complaint, the
10 Court finds that Plaintiff has stated a cognizable claim against Does 1 through 10 for retaliation and
11 cruel and unusual punishment, and this action shall proceed against those unidentified Defendants as
12 well as the named Defendants. Plaintiff is advised that the Court cannot order service of a Doe
13 defendant because the United States Marshal cannot serve a Doe Defendant. Therefore, before the
14 Court orders the United States Marshal to serve a Doe defendant, Plaintiff will be required to identify
15 him or her with enough information to locate the defendant for service of process. The United States
16 Marshal cannot initiate service of process on unknown defendants. Plaintiff will be given an
17 opportunity through discovery to identify the unknown (Doe) defendants. Crowley v. Bannister, 734
18 F.3d 967, 978 (9th Cir. 2013) (quoting Gillespie v. Civiletti, 629 E.2d 637, 642 (9th Cir. 1980)). Once
19 the identity of a Doe defendant is ascertained, the Plaintiff must file a motion to amend his complaint
20 only to identify the identified Doe defendant so that service by the United States Marshal can be
21 attempted. Therefore, the court will send plaintiff the appropriate service documents at such time that
22 plaintiff ascertains the identities of the Doe defendants. However, if Plaintiff fails to identify any Doe
23 defendant during the course of the discovery, any Doe Defendant will be dismissed from this action.

24 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, the
25 undersigned has conducted a de novo review of Plaintiff's case. The undersigned concludes the
26 Findings and Recommendations are supported by the record and by proper analysis as modified
27 herein.
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Based on the foregoing, it is HEREBY ORDERED that:

1. The November 30, 2017 Findings and Recommendations are adopted as modified herein;
2. This action shall proceed against Defendants Johnson, LeFlore Hebron, and Does 1 through 10 for retaliation and against Defendants Johnson, LeFlore, and Does 1 through 10 for cruel and unusual punishment; and
3. Defendant Allison is dismissed from the action for failure to state a cognizable claim for relief.

IT IS SO ORDERED.

Dated: January 12, 2018

/s/ Lawrence J. O’Neill
UNITED STATES CHIEF DISTRICT JUDGE