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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JOHNNY C. THOMAS,  
  
  Plaintiff,  
  
  v.  
  
J. LEWIS, et al.,  
  
  Defendants.

1:16-cv-00524-EPG (PC)  
  
ORDER GRANTING PLAINTIFF’S MOTION  
TO EXTEND TIME TO FILE SECOND  
AMENDED COMPLAINT  
  
(ECF No. 19)  
  
NINETY-DAY DEADLINE  
  
ORDER DENYING MOTION TO COMPEL  
DISCOVERY  
  
(ECF No. 20)

Johnny C. Thomas (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed his initial complaint on April 14, 2016. (ECF No. 1). On November 1, 2016, the Court issued an order finding that Plaintiff stated a cognizable claim for deliberate indifference to serious medical needs against a “John Doe” Defendant, an unknown surgeon at Kern Valley State Prison (“KVSP”) who removed a cyst from Plaintiff’s mouth. (ECF No. 15.) The Court also found that service of the First Amended Complaint was not yet appropriate because the John Doe defendant has not yet been identified. (*Id.*) Therefore, the Court granted Plaintiff ninety days to identify the John Doe

1 defendant and stated that Plaintiff may request leave issuance of any third party subpoenas,  
2 including on the California Department of Corrections and Rehabilitation (“CDCR”). (*Id.*)

3 On December 7, 2016, the Court granted Plaintiff’s request to issue a subpoena *duces*  
4 *tecum* to be served upon the Litigation Coordinator at Kern Valley State Prison. (ECF No. 17 at  
5 3.) That order directed the U.S. Marshal’s Office to serve the subpoena within 20 days and file a  
6 return of service after completion of service. (*Id.*) The issued subpoena had a compliance date of  
7 February 6, 2017 at 5:00 p.m.

8 On January 17, 2017, Plaintiff filed two motions: 1) a motion to extend time to file a  
9 Second Amended Complaint (ECF No. 19); and 2) a motion for an order compelling discovery  
10 (ECF No. 20).

11 The Court finds good cause to grant the motion for an extension of time to file a Second  
12 Amended Complaint. (ECF No. 19.) Plaintiff is granted ninety (90) days from the date of service  
13 of this order in which to file a Second Amended Complaint.

14 As to the motion to compel discovery (ECF No. 20), the Court denies the motion as  
15 premature. The U.S. Marshal has not yet filed a return of service so it is unclear at this point as to  
16 whether service has been successfully effectuated. Even if proof of service had been returned, the  
17 subpoena had a compliance date of February 6, 2017.<sup>1</sup>

18 IT IS SO ORDERED.

19 Dated: January 24, 2017

20 /s/ Eric P. Gray  
21 UNITED STATES MAGISTRATE JUDGE

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26 <sup>1</sup> It should be noted that Plaintiff has also requested monetary sanctions in the amount  
27 \$5,000 for “his reasonable expenses in obtaining this order.” (ECF No. 20 at 2.) While Plaintiff  
28 understandably places a high value on the time he used to draft his motion, he is advised that the  
Court does not look favorably upon unsubstantiated or frivolous requests for monetary sanctions.