

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

PHILLIP J. LONG,  
Plaintiff,  
v.  
JANE DOE,  
Defendant.

CASE NO. 1:17-cv-00898-NONE-JLT (PC)

**ORDER DENYING PLAINTIFF’S  
REQUEST FOR EXTENSION OF TIME  
TO IDENTIFY JANE DOE; FINDINGS  
AND RECOMMENDATIONS TO  
DISMISS THE CASE**

(Doc. 37)

**14-DAY DEADLINE**

Plaintiff commenced this action by filing a civil rights complaint on July 7, 2017. (Doc. 1.) The Court screened the complaint, the first amended complaint, and the second amended complaint, finding that the action can proceed against a single defendant, Jane Doe, on an Eighth Amendment medical indifference claim. (See Docs. 11, 12.) Despite discovery attempts, Plaintiff has been unable to identify the Jane Doe defendant, and he requests an additional extension of time to identify Jane Doe. (Doc. 37.) Upon consideration, the Court DENIES Plaintiff’s request and RECOMMENDS that the Court DISMISS the case for failure to identify the Jane Doe defendant.

On February 14, 2019, this Court granted Plaintiff ninety days to identify Jane Doe. (Doc. 13.) Plaintiff was unable to comply, and on June 27, 2019, upon motion by the Plaintiff, the

1 Court issued a motion for a subpoena directed to Jane Doe’s employer, Corizon Health, Inc.  
2 (Docs. 20, 22.) Following service by the U.S. Marshal, Corizon Health, Inc., through its counsel,  
3 Matthew M. Grigg, timely objected to the subpoena on the ground that it is “unintelligible”  
4 because it does not provide enough information to identify Jane Doe. (*See* Doc. 25 at 8–9).  
5 Considering that objection, on April 10, 2020, Plaintiff submitted a letter with additional  
6 information to help with identification and requested a more detailed subpoena to serve on  
7 Corizon Health. (Doc. 25.) The Court granted the motion and directed the United States Marshal  
8 to serve an amended subpoena on Mr. Grigg. (Doc. 26.) The Court further ordered Plaintiff to  
9 submit a notice with the Court following receipt of the documents identifying Jane Doe to enable  
10 service on that defendant. *Id.*

11 On October 15, 2020, after Plaintiff failed to respond, the Court issued an order requiring  
12 Plaintiff to show cause why the action should not be dismissed for failure to comply with a court  
13 order and failure to prosecute. (Doc. 28.) Plaintiff filed a response, indicating that Mr. Grigg did  
14 not provide Jane Doe’s identity, and Plaintiff requested assistance from the Court. (Doc. 29, 30.)  
15 The Court entered an order to show cause directed to Mr. Grigg, requiring him to show cause  
16 why contempt sanctions should not be imposed for his failure to comply with the amended  
17 subpoena served on him. (Doc. 31.)

18 On January 29, 2021, Mr. Grigg filed a response, stating that he did respond to the  
19 subpoena, but he had no responsive documents. (Doc. 32.) At his request, the Court issued an  
20 order discharging the order to show cause, and it granted Plaintiff’s motion requesting a subpoena  
21 to be served on the Litigation Coordinator at the Fresno County Jail. (Doc. 33.)

22 After a period of inactivity in this case, on June 9, 2021, the Court entered an order  
23 directing Plaintiff to identify Jane Doe within fourteen days. (Doc. 35.)

24 On July 12, 2021, Plaintiff belatedly responded to the Order with the reply from the  
25 custodian of the records of the Fresno County Sheriff’s Office dated February 22, 2021. (Doc.  
26 37.) The records custodian indicated that the Sheriff’s Office did not have responsive documents  
27 and referred Plaintiff back to Corizon Health as an independent contractor, which handles its own  
28 employment and scheduling. (*Id.* at 3.)

1 Plaintiff's response, however, was not docketed until July 13, 2021. On the same day,  
2 without knowing that Plaintiff had filed the response, this Court entered another order to show  
3 cause. (Doc. 36.) In light of Plaintiff's response that he mistakenly believed the Court had  
4 received the Fresno County Sheriff's Office letter, the order to show cause is DISCHARGED.

5 Plaintiff requests an extension of the fourteen-day deadline to name Jane Doe because of  
6 "unforeseen circumstances" and delays with legal mail. (Doc. 37.) Plaintiff does not, however,  
7 propose another means of identifying the Defendant. The Court has assisted Plaintiff and afforded  
8 Plaintiff discovery, to no avail. As this Court has previously advised, the Court cannot order  
9 service on defendants who are unidentified. *See Walker v. California*, No. EDCV 21-419-JFW  
10 (KK), 2021 WL 2106485, at \*1 (C.D. Cal. May 25, 2021); *Williams v. Sabo*, No. CV 20-1373-PA  
11 (KK), 2020 WL 9071695, at \*6 (C.D. Cal. Dec. 10, 2020). This case has been pending for over  
12 four years, and the operative complaint still has not been served on the remaining defendant.  
13 Plaintiff has failed to demonstrate that an additional extension of time will advance this litigation.  
14 Therefore, the court RECOMMENDS that the Plaintiff's request for an extension of time to  
15 identify Jane Doe be **DENIED** and this action be **DISMISSED without prejudice**.

16 These Findings and Recommendations will be submitted to the United States District  
17 Judge assigned to this case pursuant to 28 U.S.C. § 636(b)(1). **Within 14 days** of the date of  
18 service of these Findings and Recommendations, Plaintiff may file written objections with the  
19 Court. The document should be captioned, "Objections to Magistrate Judge's Findings and  
20 Recommendations." Plaintiff's failure to file objections within the specified time may result in  
21 waiver of his rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing  
22 *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

23 IT IS SO ORDERED.

24  
25 Dated: July 19, 2021

/s/ Jennifer L. Thurston  
CHIEF UNITED STATES MAGISTRATE JUDGE