

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

KRISTOPHER KIRCHNER,

Plaintiff,

v.

BITER, *et al.*,

Defendants.

Case No. 1:18-cv-00516-AWI-BAM (PC)

ORDER GRANTING PLAINTIFF’S MOTION  
FOR LATE FILING  
(ECF No. 35)

ORDER VACATING FINDINGS AND  
RECOMMENDATIONS  
(ECF No. 33)

Plaintiff Kristopher Kirchner (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff’s first amended complaint for Fourteenth Amendment due process claims against Defendants Henderson, Harden, Diaz, and Perez arising from Plaintiff’s disciplinary proceedings.

On December 16, 2020, the Court issued an order directing service on Defendants Henderson, Harden, Diaz, and Perez in this case under the Court’s E-Service pilot program for civil rights cases for the Eastern District of California. (ECF No. 23.) The order included the following information regarding Defendant Perez: “Investigative Employee J Perez; KVSP; approximately March to June 2014.” (*Id.* at 2.) The same date, the Court received information that there was not enough information to identify Defendant J. Perez.

On December 28, 2020, the Court issued an order requiring Plaintiff to show cause, within thirty days of service of that order, why Defendant Perez should not be dismissed from this

1 action. (ECF No. 27.) In that order, Plaintiff was warned that the failure to respond or failure to  
2 show cause would result in the dismissal of Defendant Perez from this action due to Plaintiff's  
3 failure to serve process pursuant to Federal Rule of Civil Procedure 4(m). (Id. at 3.)

4 Following Plaintiff's failure to respond, on February 17, 2021, the Court issued findings  
5 and recommendations to dismiss Defendant Perez from this action, without prejudice, for failure  
6 to serve process. (ECF No. 33.) In lieu of objections, on February 22, 2021, Plaintiff filed a  
7 motion to file a late response to the Court's order to show cause, together with his response to the  
8 order to show cause. (ECF Nos. 34, 35.)

9 In his motion, Plaintiff states that he originally filed his response to the Court's order to  
10 show cause on January 18, 2021, but it was returned to Plaintiff on February 16, 2021 as  
11 undeliverable (address not known), although he used the return address on the envelope from the  
12 Court. (ECF No. 35.) Plaintiff therefore requests that he be allowed to file his response late, and  
13 included his original response to the order to show cause. (Id.) Plaintiff's original response  
14 includes additional identifying information for Defendant J. Perez that Plaintiff hopes will help  
15 determine Defendant Perez's identity. (ECF No. 34.) Specifically, Plaintiff states that on May  
16 15, 2014, Defendant J. Perez was assigned as Plaintiff's Investigative Employee for Rule  
17 Violation Log# FA-14-04-024 at Kern Valley State Prison. Plaintiff has also attached a copy of  
18 the Investigative Report signed by Defendant Perez. Plaintiff further states that Defendant Perez  
19 should have signed in on the F.L.S.A. (paysheet) for Second Watch on May 30, 2014, and the  
20 Kern Valley Litigation Office should be able to compare that signature to the signature on the  
21 Investigative Report. (Id.)

22 The Court finds that Plaintiff has provided good cause for the late filing of his response to  
23 the order to show cause, and therefore the motion to file a late response is granted. Further, as  
24 Plaintiff has provided additional identifying information for Defendant Perez, the Court finds it  
25 appropriate to vacate the pending findings and recommendations to dismiss Defendant Perez for  
26 failure to serve.

27 The Court will issue a new service order including the additional information regarding  
28 Defendant Perez by separate order.

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

Based on the foregoing, IT IS HEREBY ORDERED as follows:

1. Plaintiff's motion for late filing, (ECF No. 35), is GRANTED;
2. The findings and recommendations issued on February 17, 2021 (ECF No. 33), are VACATED; and
3. The Court will issue a new service order for Defendant Perez by separate order.

IT IS SO ORDERED.

Dated: February 25, 2021

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE